COMMISSION OF INQUIRY
INTO THE
SPONSORSHIP PROGRAM
& ADVERTISING ACTIVITIES

RESTORING ACCOUNTABILITY

RESEARCH STUDIES
VOLUME 1

PARLIAMENT, MINISTERS AND DEPUTY MINISTERS

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Restoring Accountability
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Parliament, Ministers and Deputy Ministers

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INTRODUCTION

Donald Savoie

In the fall of 2004, Justice Gomery invited me to join the Commission of Inquiry into the Sponsorship Program and Advertising Activities as its Director of Research for phase II of the Commission's work, or what commonly became known as the recommendation phase. He laid out an important challenge for the research program by asking: "Do you know what makes a good judge?" I did not know the answer, as my puzzled look surely revealed, and he quickly replied: "Two good lawyers in front of the judge representing both sides of the case in a very competent manner." To be sure, the point was not lost on me: Justice Gomery was prepared to consider any issue, so long as the research program was able to provide a solid case for both sides. At no point did Justice Gomery indicate a bias on any question, a preconceived notion or the suggestion that the research program should consider any issue, or look at it from a given perspective. This approach also guided his participation at all the Advisory Committee meetings and at roundtable discussions held in five regions between August and October 2005.

I took careful note of the Commission's mandate and its terms of reference. The terms of reference called on Justice Gomery to make recommendations, "based on the factual findings" from phase I, "to prevent mismanagement of sponsorship programs or advertising activities." It listed a number of specific issues to review and asked for "a report on the respective responsibilities and accountabilities of ministers and public servants."

I monitored the testimony from witnesses who appeared before Justice Gomery, in both the Ottawa and the Montreal sessions. I also produced a paper designed to identify the key issues for the Commission to consider. I met regularly with Justice Gomery to review the issues and the Commission's research program as it was being planned. He asked early on that I take into account what the government was doing to reform its management activities and to review the various documents being tabled by the President of the Treasury Board, so the Commission would not try to reinvent the wheel. He noted, for example, that the Treasury Board had produced a solid document on the governance of Crown corporations. He made the point that, rather than start from scratch, we should offer a critique of the document and compare its findings with developments in this area in other countries.

The Commission's research program was the product of many hands. In particular, I want to single out the work of Ned Franks, Professor Emeritus at Queen's University and one of Canada's leading students of Parliament. He helped with every facet of the research program, from identifying issues to study, to recommending scholars and practitioners.

The Commission's Advisory Committee also provided important advice and support to the research program. The Commission was able to attract an impressive list of Canadians to serve on the Committee, led by chairman Raymond Garneau, a leading business person from Quebec, a former Minister of Finance in Quebec and a former Member of

Parliament in Ottawa. Other members included Roch Bolduc, a former Senator and former senior public servant with the Quebec Government; Professor Carolle Simard, from the Department of Political Science and Public Administration at the Université du Québec à Montréal; Bevis Dewar, a former Deputy Minister of Defence and head of the Canadian Centre for Management Development, recently renamed the Canada School of the Public Service; the Honourable John Fraser, a former federal Cabinet minister and former Speaker of the House of Commons; Constance Glube, a former Chief Justice of Nova Scotia; Ted Hodgetts, Professor Emeritus at Queen's University and a member of the Royal Commission on Financial Management and Accountability (Lambert Commission) and editorial director for the Royal Commission on Government Organization (Glassco Commission); and Sheila-Marie Cook, a former official with the federal government and the Commission's Executive Director and Secretary. I acted as Secretary to the Advisory Committee.

I can hardly overstate the importance of the work of the Advisory Committee in designing and overseeing the Commission's research program. I benefited greatly from the wise counsel members provided to me both individually and collectively, from their insights and their necessary words of caution. They were generous with their time and their patience. They read the various research papers and provided advice on how to make use of their findings in shaping the phase II report.

At its most general level, the Commission's research program examined how Parliament relates to the Canadian Government and to public servants, and vice versa; how best to promote transparency in government; and the role of key political and administrative actors in government. The papers produced for the Commission promote various perspectives, and at times conflicting ones. This diversity was by design. The papers also offer different methodologies. We were fortunate in being able to attract leading scholars in their fields to produce these research papers for the Commission. We also turned to practitioners for papers dealing with exempt staff, internal audit, and advertising and sponsorship issues.

The papers deal with all the issues Justice Gomery was asked to address. They look at the respective roles of Parliament, ministers and senior public servants; the appointment process for deputy ministers and the evaluation process for them; access to information; and legislation for whistle-blowing and lobbying.

The Papers

"Parliament and Financial Accountability," by Peter Dobell and Martin Ulrich of the Parliamentary Centre, reports on Parliament's financial oversight role. It reminds readers that Parliament is the source of legitimacy for the Government's spending decisions. The focus of the paper is on the mechanics and possible incentives of Parliament's handling of financial authorization and review. It notes that the assignment of responsibility for the review of the Estimates to various parliamentary committees is meant to provide opportunities for detailed scrutiny of these Estimates. Open scrutiny can lead to improved understanding of program expenditures and of their inherent financial risks. Recognizing Parliament's limited success in reviewing plans, departmental budgets and performance reports, the paper offers proposals for improving this financial oversight.

Interviews with parliamentarians suggest that they feel they have a good understanding of aggregate revenues and expenditures as well as deficits, surpluses and debts. Although they are not aware of the details of government transactions, they consider that the *Financial Administration Act* and the guidelines, procedures and requirements are sufficient to maintain financial integrity. However, they acknowledge that they do not pay much attention to departmental Estimates and, as a result, have only a weak idea of what level of resources is expended to achieve program results. Parliamentarians admit with regret that if they carried out a vigorous examination of plans, departmental budgets and performance reports, they should be able to identify at an early stage those programs that are susceptible to the misuse of public resources. They could also convey to Ministers and officials that Parliament is paying attention to financial management.

Apart from the heavy demands on the time of parliamentarians, the limited success of parliamentary committees in carrying out their financial oversight responsibilities owes much to their members' lack of technical expertise in analyzing effectively the very complex financial information contained in the Estimates. To overcome this major deficiency, Dobell and Ulrich propose the establishment of a strong financial analysis service reporting to Parliament.

The limited success of committees is also related to the lack of incentives for parliamentarians to devote time to financial oversight. With that in mind, Dobell and Ulrich recommend adopting a procedure that would make it possible for a committee to request an hour's debate in the House with the responsible Minister, if the committee's report recommending the modification of a program and related expenditure plans has been rejected. Such exposure in the House is likely to attract media attention.

The authors also point to the desirability of some arrangement for modifying vote structures. In support of their proposal, they state that, had the cost of the gun-control program been reported separately rather than being included in the vote providing for the administrative cost of the entire Department of Justice, the actual cost of the program would have been evident, leading to a debate at a much earlier stage.

Dobell and Ulrich note that, had the accounting officer system been in place at the time of the Sponsorship Program, "it would have been necessary to document variances from standard procedures, including those relating to involvement of the Ministers and their staff." Finally, they suggest that a review of the appointment of all senior government officials by parliamentary committees could sensitize nominees to parliamentary requirements, including their responsibility for financial stewardship.

"The Standing Committee on Public Accounts," by Jonathan Malloy, makes the case that the effectiveness of the House of Commons Committee on Public Accounts is limited by its structure, human resources and procedural constraints, and by the parliamentary and political systems in which it operates. One of the Committee's major weaknesses is rapid membership turnover, leading to a lack of continuity, experience and expertise. In addition, MPs and potential Committee members do not have sufficient incentives to be interested in accountability issues, compared with other demands on their time, except when these issues emerge to secure a high profile in the media.

Malloy explains that the Public Accounts Committee has the mandate to take a retrospective look at government activities in terms of expenditures and financial management. It relies on the work of the Auditor General of Canada, who reports to Parliament through the Committee, providing a forum for discussion of the Auditor General's reports. Chaired by an Opposition member, it can also generate its own reports on some matters separate from those considered by the Auditor General, but it has only a small research capability to do so.

The Committee's purpose is to hold the Government accountable for its spending decisions and management of public funds. It provides the opportunity for the questioning of ministers and officials, and creates a degree of transparency that is not otherwise available. It is able to draw public attention to matters of public concern, and it is believed to help prevent financial mismanagement through its public exposure of mistakes or possible wrong-doing. Indeed, much of the Committee's influence is believed to stem from this public scrutiny of inappropriate behaviour.

Malloy points out that parliamentary committees lack clear ground rules about the treatment of public servants as witnesses. Public servants are not always free to speak, and they risk criticism for saying either too much or too little. There is also the potential that, in the overall political conflict, they will become caught in the crossfire between committee members.

The author suggests that one possible solution is to adopt the British practice of having senior public servants assume a separate and additional role of responsibility for financial affairs in their departments. The Deputy Minister would assume a second title, Accounting Officer, assigned by Treasury Board, and, in that capacity, would report fully on the financial performance of the department directly to Parliament. This responsibility, Malloy argues, would alleviate the current confusion about accountability through the Minister.

He also suggests that the Committee should deal differently with macro matters, such as the Sponsorship Program, which provoke partisanship, and micro matters, such as non-controversial administrative topics, which entail no partisan conflicts or acrimony. The news media coverage of the Committee's work is provoked, for the most part, by the degree of controversy arising in the hearings, and there is little media attention to the Committee's ensuing report.

Malloy addresses the Public Accounts Committee's role and its relevance in the investigation of the Sponsorship Program. The 2004 hearings served as a public forum and source of information following the release of the Auditor General's report. He suggests, however, that the Committee's inquiry was ineffective, relatively shallow in dealing with the issues, and highly partisan in its treatment of the disclosed information. But, given the constraints under which it currently labours, it is unlikely that the Committee could have done much better.

Malloy makes four recommendations. The Public Accounts Committee must have a stable and experienced membership, one that requires the political parties to commit to specific assignments and to help build up this expertise. Members of Parliament must take a greater interest in accountability issues. The Committee should have more permanent staff, to enable it to carry out independent research and to question experts on a professional, non-partisan basis. And, finally, Canada should adopt some variation of the British system of accounting officers in each department.

"Clarifying the Doctrine of Ministerial Responsibility As It Applies to the Government and Parliament of Canada," by David E. Smith, describes the constitutional doctrine of ministerial responsibility as the hinge of Parliamentary Cabinet government based on the Westminster model. He explains that there is general agreement in the literature that, where ministerial errors occur, information (and not heads) is what is required. But who provides the explanation, and to whom? In the traditional model, it is the Minister answering in Parliament. Still, problems arise with this model, including the limits to ministerial authority. Deputy ministers, for example, have administrative authority conferred directly on them by statute, such as in the *Financial Administrative Act*. A further limitation is that only incumbent ministers may answer questions in Parliament, because only they have authority to act.

If deputy ministers who have specific authority are accountable to a minister (or to the Prime Minister under whose prerogative they are appointed) but not to Parliament, and if (as in the second instance) ministers can claim not to be personally accountable to Parliament for the exercise of that authority, is there not an accountability deficit? And, if so, Smith asks, how do we remedy it?

Smith writes that ministerial responsibility has been described as a fact, not a code—an important distinction. Ministerial responsibility is an evolving concept whose application, often in moments of high political drama, can never, in the absence of a particular set of facts, be fully anticipated. In addition, a country's political and administrative culture can, and do, influence the interpretation of the concept.

The four political systems—Canada, Australia, New Zealand and Britain—sharing the Westminster model illustrate differences as well as similarities. For instance, the accounting officer concept exists in Britain, but not in the other three countries. A number of arguments have been put forward for adopting the accounting officer model in Canada. However, critics, particularly the Privy Council Office, maintain that its introduction would compromise the practice of ministerial responsibility by dividing (and thus depreciating) accountability between ministers in the House and deputy ministers before committees. Some have argued for a made-in-Canada response: the deputy minister should either say no to a ministerial suggestion he or she finds inappropriate or should agree, and, once agreed, should accept the responsibility that accompanies that course of action before a parliamentary committee.

Smith explains that deputy ministers are appointed and dismissed by the Prime Minister as one of the special prerogatives of that office. As with ministers, the Prime Minister's control over senior departmental officers underlines, first, the Prime Minister's importance and, second, the significance of the ministry as a collective entity. The authority of the deputy minister derives from the *Interpretation Act*. This Act states that a deputy may exercise the power of a minister of the Crown, except for any authority to make a regulation. But deputy ministers are more than alter egos of their ministers. *The Financial Administration Act* gives broad statutory power to deputy ministers in financial management. Deputy ministers also have responsibilities under other statutes, including the *Public Service Act* and the *Official Languages Act*.

Smith points out that, accounting officers in Britain notwithstanding, the doctrine of ministerial responsibility in the four Westminster-based systems is substantially similar. The difference between Canada and the other three countries is that, in those systems, there is a more vigorous theoretical debate about the doctrine than is found in Canada. Arguments for a statutory-based, rather than convention-based, doctrine are increasingly heard, especially in Britain. He concludes with several recommendations: that a parliamentary resolution be passed to define the convention of individual ministerial responsibility; that parliamentary protocol be adopted to specify the powers of Parliament and its committees in the implementation of the doctrine of individual ministerial responsibility; and that the British model of accounting officer be introduced for an experimental period.

"Ministerial Staff: The Life and Times of Parliament's Statutory Orphans," by Liane E. Benoit, states that, of the many sounds heard echoing through Ottawa's corridors of power, those that often hit hardest but bear the least scrutiny belong to an elite group of young, ambitious and politically loyal operatives hired to support and advise the ministers of the Crown. Collectively known as "exempt staff," they are an "intermediate class of persons" that has become part of the Canadian machinery of government, yet has not been recognized by constitutional theory. Though not elected and often devoid of professional qualifications relevant to the ministries in which they are involved, these advisors can exert a substantial degree of influence on the development and administration of public policy in Canada. They are also well placed to influence the interaction between the bureaucracy and the politicians.

Benoit's paper explores the current role and function of ministerial exempt staff, as well as their relationship to the bureaucracy, their ministers and the external stakeholders. It examines the checks and balances that exist within the system to ensure that their duties are carried out in an appropriate and ethical manner commensurate with published guidelines, applicable codes and relevant legislation.

In her analysis of the issues currently surrounding exempt staff, Benoit maintains that the exempt staff group has operated at the apex of power, with very little by way of law or convention to govern their activities, inform their relationships with other levels of government, or determine the degree of influence or power they can legitimately wield. As a group, ministerial staff fall between the cracks in the rules governing both sides of the political/bureaucratic divide, exempt from the conventions and statutes that control the activities of public servants but likewise unimpeded by the oaths and obligations of ministerial responsibility and accountability to which their elected masters are bound. Exempt staff must view government through a political prism, act as the minister's eyes and ears, manage the flow of paper, e-mail and access to information requests, respond to constituents, cooperate with the PMO and PCO, and, above all, protect their minister and the government from any action or issue that might adversely affect their chances of re-election.

Political loyalty and partisan affiliation are the key criteria for the job, although Benoit reports that many ministers try to establish the right balance of regional coverage, expertise, gender, ethnicity and language. Work in a minister's office remains largely a privilege of youth — when fierce political idealism, physical stamina and personal independence are all available to satisfy the long hours and depth of commitment demanded by life on the Hill. Section 39 of the *Public Service Employment Act* is the only piece of binding legislation governing the staffing of exempt staff. Some members of the exempt staff argue that any privileges they enjoy are more than outweighed by the absence of employment rights and job security. The jobs of ministerial staff can evaporate overnight should a minister be shuffled out of the Cabinet or lose the seat in an election. The Act explicitly specifies that exempt staff cease to be employed 30 days after such an event, but it fails to make clear that exempt staff can be fired at any time, with or without cause. Staff members who feel they have been wrongly dismissed have neither an appeal process nor a union behind them for support.

The role of ministerial staff in policy development can be a source of contention in political/bureaucratic relations. Departments, particularly those dealing with mandates of a highly technical nature, remain convinced that the role of ministerial staff should be restricted to that of political weathervane and that their "interference" in the policy development process can result in serious negative consequences for the Canadian public.

Accountability becomes a serious issue when exempt staff assume the role of proxy for the minister. It is impossible for every issue that arises from the department to be taken to the minister. According to Benoit, the ministerial staff can become the end point for all but the most important decisions. The Privy Council guide clearly states that "ministers are personally responsible for the conduct and operation of their office" and that ministers cannot legally transfer their authority except through legislation. The ability of ministers to deny responsibility in matters where their staff either choose not to inform them, as a strategically political protective measure, or fail to inform them, because they did not recognize the significance of the information, raises serious questions about the current integrity of our system of accountability. It is important to remember that the minister's staff carry no constitutional accountability in their own right.

Benoit challenges the effectiveness of the *Conflict of Interest and Post-employment Code for Public Office Holders* as a public safeguard against conflict of interest or unethical behaviour on the part of exempt staff. The Ethics Commissioner's interpretation of his mandate has left him unwilling to police the conflict-of-interest provisions with respect to exempt staff. As well, a recent amendment to the Code that authorizes the exemption of part-time ministerial aides from all but the first section of the Code represents a further diminishment of its effectiveness. These part-time staff members are often drawn from the lobbyist community, operate largely outside the conventional boundaries of the ministerial office and, on occasion, are paid directly and privately by the minister.

The most controversial of the "exemptions" to the *Public Service Employment Act* is the one that affords priority access into the public service for exempt staff who have been employed in a minister's office for a minimum of three years. This access has been criticized as posing a threat to the political neutrality of the bureaucracy. The exemption guarantees a ministerial staff member entry into a public service job at a level equivalent to that at which he or she was employed in the minister's office. It is interesting to note, however, that, for ministerial staff, it now represents far less of an enticement than might be expected. Rather than the coveted reward it was meant to bestow, Benoit maintains that a career in the public service today is perceived by many to be an option of last resort. Statistics compiled by the Public Service Commission confirm that less than 10 percent of exempt staff are given priority appointments in any given year.

Benoit concludes that when political staff attempt to give direction to departmental officials, the practice is subtle, reasonably pervasive and, in many instances, a practical necessity. Much of it can arise in the context of regular collaborative interaction between the ministerial office and the department and, as such, is difficult to categorize specifically as "direction." How direction from the minister's office is received in the department largely depends on the personal reputation and credibility of the exempt staff in question. In the day-to-day workings of government, the bureaucracy appears to be fairly resilient to attempts by rogue political staff to circumvent the rules of sound financial management; similarly, it seems to be creative in its efforts to ensure that the wishes of the ministerial office are carried out "honourably." In that sense, any serious impropriety and complicity on the part of the bureaucracy noted in the Sponsorship Program appears to be an aberration rather than the rule.

Benoit draws five prescriptive conclusions. First, the doctrine of ministerial responsibility, at least when it comes to exempt staff, has to be fully recognized and accepted by ministers or some new mechanism of accountability needs to be created. Second, a more robust body of non-partisan research on the actual day-to-day workings of the ministerial office and the PMO should be assembled, as a resource for political parties as they guide ministers in the selection of appropriate candidates, in developing a minister's own knowledge of how to use exempt staff most effectively, and to assist transition teams in their orientation of new ministerial staff and the development of ongoing in-house training. Third, the current *Conflict of Interest and Post-employment Code for Public Office Holders* and the *Parliament of Canada Act* must be revisited with regard to the Ethics Commissioner's jurisdiction over ministerial staff, the regulations involving full-time and part-time staff, and pre- or post-employment lobbying activities. Fourth, PCO guidelines for ministers and deputy ministers and the Treasury Board's guidelines for ministers should be reviewed with regard to the policy role of ministerial staff and reconciled on a philosophical and technical basis. Finally, exempt staff should be required to undergo a training exercise to teach them the rules, policies and conventions related to ministerial-departmental authority, the management of ministerial documents, and such matters as correspondence, archives, and financial regulations.

Benoit concludes that a 50:50 or even a 60:40 assessment of "good to bad" is not an acceptable standard of performance for ministerial aides—a role of considerable importance to the affairs of state. But such an assessment is also not surprising, given the high degree of youth and amateurism typical of the role; the variability in the personalities and capacities of the ministers who hire them; the long-standing debate over their rightful role in the policy process; the tensions that arise due to disparities in age, expertise and experience between them and their department counterparts; and the tremendous pressures, both political and personal, that bear upon them in this role.

"The Deputy Minister's Role in the Government of Canada: His Responsibility and His Accountability," by Jacques Bourgault, reports that the role of deputy ministers in the federal government has grown and become increasingly complex, with new expectations beyond legislative requirements and conventions. In his paper, Professor Bourgault addresses a number of issues, including the horizontal management status, the careers, and the responsibility and accountability of deputy ministers.

Bourgault cites significant changes in the role of deputy minister, including shorter tenures in departmental assignments and greater mobility across departments, with the result that deputy ministers have limited subject-matter experience or familiarity with their organization's day-to-day operations or organizational culture. He also points to the recent trend for deputy ministers to deal more extensively with one another and with central agencies, requiring them to have considerably more interaction with their counterparts in other departments and agencies (now 40% of their time), and, consequently, less interaction with their departmental subordinates.

Deputy ministers have become members of a community that increasingly identifies with one another and the Government overall rather than with their departments. They serve the Government and are assigned to departments, not the reverse. As a result, they have an ultimate reporting obligation to the Prime Minister and, in effect, a reporting line to the Clerk and Secretary to the Cabinet. Where matters arise that are or may become visible in the media, deputy ministers are expected to inform the Clerk, who may decide to report the information to the Prime Minister.

Bourgault reports that the deputy minister supports the minister's accountability by preventing mistakes, identifying any that have been made as soon as possible, informing the minister of these mistakes, and taking corrective action as well as imposing any necessary sanctions. In situations where a minister or ministerial staff members are in contact with deputy ministers and departmental officials, a number of long-standing rules and conventions apply. The acid test in cases where a controversial request regarding program management is made on behalf of a minister is whether it might contravene the law. At a more operational level, requests are assessed in terms of criteria such as consistency with guidelines and departmental policies.

Given their multiple and simultaneous mandates from the Prime Minister, the Clerk, central agencies and ministers, deputy ministers may be led, Bourgault says, to act by "proprioception," or a sixth sense—an ability to instinctively decode and respond to information with appropriate strategies. He writes about their ability to have an awareness of signals and the environment in which they operate and to develop responses to anticipated demands. He implies that deputy ministers can act on the basis of what they think a minister might want, regardless of being asked to do so.

In addressing issues specifically related to the Sponsorship Inquiry, Bourgault poses hypothetical questions concerning problems that might arise from systemic causes. He suggests that, unless the problems associated with the Sponsorship Program can be attributed to "corruption, partisan politicization, blackmail, or some personal gain," some of the decisions in the process could be explained only in terms of someone operating with a sixth sense about what was expected of him or her. Bourgault warns against the adoption of new rules and controls. Instead, he recommends four measures that would not impose unnecessary red tape and costs:

- establish clearly delineated practices to formalize the conventions enabling ministers to intervene appropriately in the department's program management;
- provide a forum for any deputy minister whose dismissal was caused by taking a position on an ethical issue, avoiding irregular practices, or protecting public funds;
- give deputy ministers ultimate and exclusive responsibility for reporting to both central agencies and parliamentary committees that examine decisions respecting budget and spending allocations; and
- focus on the importance of deputy ministerial leadership and emphasize leadership characteristics in performance evaluations.

Bourgault points to the challenges for deputy ministers of reading often-obscure signals while maintaining an all-encompassing perspective in their work. While there are formal performance evaluations and extensive opportunities to share information with peers, there is no apparent professional support for deputy ministers seeking advice, interpretation and help without prejudice. By contrast, senior executives in the private sector increasingly use experienced coaches to counsel them on a confidential basis.

"The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform," by Peter Aucoin, describes how the existing model of a professional, non-partisan public service is one that has been reformed in many ways since it was established in the early part of the 20th century. A notable missing piece in the reforms has been the staffing and management of the deputy minister cadre. The conventions respecting the staffing and management of deputy minister level officials which once served to secure the required neutrality of the public service are no longer as secure as they once were. Aucoin proposes a set of reforms that builds on traditional Canadian and Westminster conventions while establishing a firmer base of public service independence and neutrality.

Aucoin begins by describing the basic elements of the Canadian model and argues that the existing regime is now a part of the problem. He identifies the political pressures on the public service, starting with the "New Public Governance." He compares the Canadian experience with that of the Westminster systems of Australia, Britain and New Zealand.

The senior public servant who heads a government department or ministry under a minister is the link between the minister/Government and the professional and non-partisan public service. This official has both departmental/ministry and corporate/whole-of-government responsibilities. They are all members of the senior public service executive team and are considered to be the leadership of the professional and non-partisan public service, however they are appointed or whatever their employment status or contract.

In Canada, the authority to staff the public service is vested in the Public Service Commission, except for the two highest ranks—deputy minister and associate deputy minister—which are appointed by the Prime Minister, using the authority of the Governor in Council. The most senior deputy minister is the Clerk of the Privy Council, who is also Secretary to Cabinet and Head of the Public Service, and who serves as the Deputy Minister to the Prime Minister. The Clerk, with the assistance of the Committee of Senior Officials (COSO), leads the deputy minister community and, by convention, advises the Prime Minister on deputy minister staffing and performance evaluation.

The most recent reforms to the Canadian public service system have sought to reinforce the professional and non-partisan characteristics of the public service. The Public Service Commission is positioned at arm's length from the deputy minister community, and the President is appointed by the Governor in Council, with the approval of Parliament, to serve a seven-year term during good behaviour. The President can be removed only on address to the House of Commons and the Senate. These conditions clearly distinguish this position from those of deputy ministers, who are appointed and serve at the pleasure of the Prime Minister.

By convention, deputy ministers are appointed primarily but not exclusively from among the ranks of the public service. The appointment is meant to be based on merit and, notwithstanding their formal appointment by the Governor in Council and the prerogative powers of the Prime Minister, deputy ministers are deemed to be professional and non-partisan public servants. The very few exceptions to this tradition, where the Prime Minister on his or her personal initiative appoints a deputy minister from outside the public service, serve to confirm the acceptance of the convention.

The Canadian public service has traditionally given high priority to its loyalty and responsiveness to ministers. Aucoin says that responsiveness has not been viewed as the result of political pressure; nor has it been seen as undermining the neutrality of the public service. Rather, the public service leadership has independently placed a high priority on responsiveness as a core public service value because it feels that the conventions on the relative independence of deputy ministers from ministers, including the Prime Minister, were sufficiently respected to enable them to balance the values of political responsiveness and public-service neutrality.

Aucoin maintains, however, that the New Public Governance has tipped the balance too far in the direction of responsiveness. The public service leadership has become either too subservient to the Prime Minister, ministers and their political staff or their conventional independence has been eroded by the breaking of the traditional bargain between prime ministers and ministers and the public service. Aucoin argues that the independence of deputy ministers needs to be restored to secure the required balance, particularly through the strengthening of the adherence to the value of public-service neutrality.

The relatively recent emphasis on management necessarily led to reforms that would deregulate the administrative systems. In Canada, Aucoin reports, efforts were made to streamline the regulatory regimes that governed the management of financial and human resources at the departmental and operational levels of the public service. Deregulation was logically accompanied by decentralization, insofar as managers, from deputy ministers down through the departmental hierarchies, were given greater management authority in order to achieve economy, efficiency and effectiveness in the use of resources.

Aucoin questions the adequacy of the existing Canadian regime for staffing and evaluating deputy ministers to meet the requirements of a neutral public service that is asked to attain the highest standards of integrity and competence. He argues that a new staffing and management regime, independent of the Prime Minister, is needed, and he suggests that the solution lies in the institutionalization of the conventional bargain: to have the public service leadership—the deputy minister cadre, including the Clerk—staffed and managed by the public service itself, but subject to a democratic check.

The final section of Aucoin's paper makes the case that the authority to recommend the appointment of deputy ministers, including the Clerk, and the responsibility to evaluate their performance should be assigned by statute to a Deputy Minister Commission. This Commission, chaired by the Clerk, would have as members a select number of senior deputy ministers and at least two external members appointed by the Governor in Council, on recommendation by the Commission and with the approval of Parliament. This section also outlines the roles and responsibilities of the Commission, which would build on the existing system, as administered by the Clerk and assisted by the Committee of Senior Officials. The Clerk's role as Head of the Public Service would become a shared power and responsibility with the Deputy Minister Commission.

The Commission would be required to find the proper balance, in staffing the deputy minister cadre and in evaluating individual deputy ministers, between political responsiveness and non-partisan neutrality. Aucoin maintains that such an institutionalization of the process need not make the staffing and evaluation of the deputy minister cadre excessively complex, slow or inefficient.

PARLIAMENT AND FINANCIAL ACCOUNTABILITY

Peter Dobell and Martin Ulrich

1 Introduction

The general question we address in this paper is whether Parliament—primarily the House of Commons—could further discourage the misuse of public funds by government. And, for cases where the government does not adequately exercise financial stewardship, as occurred in the management of the Sponsorship Program, we look at Parliament's ability to promptly identify such cases and to investigate and publicly expose such possible misuse.[1]

Establishing a legal framework for financial administration—including the annual voting of funds by parliaments—and actively holding the government to account for its performance are widely recognized as two primary responsibilities of Parliament. Most MPs believe that the financial administration framework—legislation, such as the *Financial Administration Act*, and the Standing Orders, such as the Business of Supply and committee mandates—is generally sound.[3] The recent initiatives regarding whistleblower legislation and the unanimous recommendation of the Public Accounts Committee to clarify accountability for administration between Ministers and Deputy Ministers, however, illustrate ongoing efforts to update and strengthen the framework.

As for Parliament holding the government to account for financial management, MPs are less comfortable. They feel that the work of the Auditor General and the Public Accounts Committee is important and effective, but most acknowledge that their understanding of how public resources are used by government to achieve policy results is inadequate. Their understanding would be improved by a more thorough review of the Estimates, both for annual supply—providing the funds to deliver government programs—and in support of their oversight of departmental performance.

It must be recognized that the challenge of parliamentary oversight is great, owing on the one side to the continually increasing complexity and scale of government and on the other to the growing number of competing demands on the time of MPs. In addition, as the power of the Prime Minister has grown there has been an understandable tendency on the part of the public service to consider Cabinet approval as representing the ultimate endorsement. As a result, officials have come to regard gaining Parliament's approval as simply a further obstacle to be surmounted rather than as an essential step that could lead to an improvement in legislation and greater public understanding and legitimacy. Weak parliamentary oversight over a period of time has re-enforced such views.[4]

It is not that the weakness has not been recognized. Many steps have been taken over recent years—some by Parliament itself, others by government—to improve Parliament's performance in this area:

- Establishing the Government Operations and Estimates Committee with a mandate to guide and oversee the House Estimates review process;
- Reviewing the Estimates from two departments, selected by the Leader of the Official Opposition, in the Committee of the Whole; and,
- Improving government reporting on plans and performance, as well as enhancing web access to related departmental information.

In spite of these steps taken to improve Parliament's capacity to oversee the government's handling of public resources, the overall results have not been impressive. Members of all parties were troubled a few years ago when information on the cost of carrying out the gun control program surfaced. There was a widespread feeling among MPs that, had they seriously reviewed Estimates, they could have identified the problem earlier and pressed for cost controls. Many Members also feel that Parliament would have been able to identify and publicly expose much more quickly the financial mismanagement related to the Sponsorship Program. Thus there is scope for improvement in financial oversight by Parliament and openness to considering practical ways to do so.

To assist in answering the question of how Parliament might improve its financial oversight to further discourage misuse of public funds, this paper will provide a perspective on reasonable expectations, a descriptive summary of the parliamentary oversight mechanisms and powers—including areas for improvement identified in other studies—and an analysis of such initiatives in light of practical parliamentary dynamics. Raising practical considerations should not be interpreted as indicating pessimism regarding certain proposals. Rather, it is recognition that parliamentarians play many roles and that their resources and time are limited. They also operate within a competitive political party system. Effective initiatives, therefore, are likely to be those that are sensitive to these considerations.

2 Reasonable Expectations of Parliamentary Financial Oversight

While Parliament establishes the legal framework for financial management and provides for public oversight, it is the government—in our view—that should establish the detailed rules, procedures and incentives within the public service to provide a high level of assurance of integrity in using public resources. The government also should look for instances of misuse of public resources and promptly take effective corrective action. Parliament enters by examining and exposing incidents when the government's approach appears to have failed.[4] Parliament then should review the legal framework and its oversight activities to assess if they adequately discourage financial misuse.

The Sponsorship Program offers a clear case of where the government's regime did not work adequately and where Parliament's reaction was delayed and arguably inadequate. The investigation of the Public Accounts Committee (PAC), although clearly adequate to make the administration of the Sponsorship Program a political issue, did not have the mandate, powers and resources to investigate as deeply as has been possible under the Commission of Inquiry. Some MPs also feel that the PAC investigation was constrained by the Liberal majority on the Committee during the 37th Parliament through their rejection of certain proposed witnesses. Moreover, the visibility caused by the Committee's review and by Question Period, although valuable, likely would not have been adequate to cause a commission of inquiry to be created without the change in Prime Ministers and an impending election—both unrelated to the Sponsorship issue. In short, there is no assurance under present parliamentary practices that future comparable instances of financial mismanagement would be exposed to adequate public review.

In addition to strengthening its identification and exposure of wrongdoing, Parliament should review, when wrongdoing is confirmed, the adequacy of its financial legislation and financial oversight practices—

does the existing parliamentary financial control framework adequately discourage financial misuse in government? In reviewing this framework, it is important to also keep in mind public policy objectives—the reason public resources are used in the first place. While proper financial administration in general complements the achievement of objectives of public policy, it also is important to note that procedures and controls, justified as in the interest of stewardship, can become excessive or misdirected.[5] A challenge for Parliament in strengthening financial administration is to also keep in mind the value of achieving public policy purposes effectively.

The PAC has already recommended a change to the financial framework, in particular application of Accounting Officer responsibilities for Deputy Ministers. Weak Committee review of Estimates also plays a role in shaping expectations of the government regarding financial oversight. Both areas will be examined with the aim of assessing their potential to discourage misuse of public resources.

Thus, while Parliament cannot be blamed for financial misuse such as occurred in the Sponsorship Program, it should be expected to reconsider the financial framework and financial oversight practices to promote effective financial management, and publicly expose wrongdoing when it occurs.

3 Parliamentary Financial Oversight: An Overview

This section looks at financial oversight from three broad perspectives. The first identifies the different ways parliamentarians see themselves as exercising financial oversight. The second summarizes some of the key instruments of oversight—in a sense the "machinery" used. The third perspective concerns parliamentary powers of investigation and their understanding of accountability.

3.1

Parliamentary Perspectives on Financial Oversight

In a 2001/02 Parliamentary Centre study of financial oversight,[4] sitting members of the House of Commons described their sense of their performance. Their views tended to focus on three distinct perspectives:

- *Whole of government*: total revenue and expenditure, where the Budget, Budget Papers, and the Finance Minister's Speech to the House of Commons are the principal documents;
- *Programs and departments*: departmental programs and activities, where the Estimates, departmental Reports on Plans and Priorities and Departmental Performance Reports are the principal documents; and,
- *Transactions*: the millions of individual financial transactions, documented mostly in substantial detail in the Public Accounts of Canada, and also aggregated by programs and activities in Estimates documents.

In this study, the views of MPs were queried as to the effectiveness of their engagement in financial oversight. Members felt they had a reasonable understanding of aggregate revenues and expenditures, deficits and surpluses, as well as aggregate debt and recent trends. The Finance Committee of the House of Commons usually undertakes a major study each autumn of the issues related to the upcoming budget. Moreover, the budget and the debate on it is a major event on the annual parliamentary calendar. Such substantial parliamentary engagement at an aggregate level, however, is unlikely to shed much light on cases of misuse or wastefulness of resources in specific financial transactions or in financial management in a specific program, but it does help sensitize members to the significance of financial matters.

While parliamentarians inevitably do not have a good understanding of the millions of individual transactions, they are aware that the

Financial Administration Act provides rules to govern these transactions, that the Treasury Board has an oversight role, that the Auditor General audits them and reports to Parliament on weaknesses, and that the PAC (as well as other committees on occasion) reviews the Auditor General's Reports and recommends corrective actions to the House—which typically the House supports. On the whole, at the time we did our study in 2001/02, Members of Parliament felt that this procedure worked quite well. It is less certain that they would feel equally comfortable today.

The program level was uniformly seen as the weakest area of parliamentary financial oversight. Members often admitted—sometimes with regret—that they did not pay much attention to the Estimates, that they had only a weak idea of what level of resources was expended to achieve program results, and they did not know what financial instruments departments use to achieve their assigned results. In the series of incidents over the last few years (Human Resources Development Canada (HRDC) contributions program, gun control, sponsorship) a number of MPs apportioned at least some "contextual" blame to inadequate parliamentary oversight of program expenditures. A vigorous examination of plans, departmental budgets, and performance—they believe—would help convey to Ministers and officials that Parliament is paying attention to financial management. It also might help them to better identify the kinds of programs that are most susceptible to the misuse of public resources, and encourage them to strengthen parliamentary oversight in these areas.

Such weak parliamentary attention to the Estimates has a further negative effect on financial stewardship. It can weaken the effectiveness of those officials who, as part of their duties, seek to protect financial integrity and clear reporting of expenditures and results to Parliament and the public. Many officials whose job is related to effective governance procedures pay considerable attention to Parliament because they see it as part of their job of serving Canadians. Weak parliamentary committee attention to the Estimates can leave those officials charged most directly with financial stewardship more vulnerable to the pressures of some program managers who see financial stewardship procedures as an impediment to the delivery of policy results. Some committees do not bother to review the Estimates.[7] When Ministers do attend committee meetings to defend their Estimates as part of the annual supply process, committees often pursue partisan policy issues or benefits for their part of the country. Therefore, notwithstanding the formal accountability (within government) of line managers for financial regularity as well as policy results, lack of evident parliamentary committee attention to departmental plans and performance likely diminishes the influence of those officials whose duties align best with financial stewardship.

Our focus on the weakness of the House of Commons review of the Estimates does not argue that review by the PAC or the audits of the Auditor General are not important. They are, and the contribution of the PAC to financial oversight is addressed in a related paper.[8] At the same time, departments have much greater and continuing links to the House of Commons Committee mandated to oversee their department. Accordingly, the attention of other committees to financial and performance matters is also important.

3.2

Core Instruments of Oversight

The central or core "machinery" of Canadian parliamentary financial oversight is that:

- All funds the government receives are placed in the Consolidated Revenue Fund (CRF);

- No funds can be withdrawn by government from this fund without the formal approval of Parliament;

- The annual government budget balances spending obligations in legislation, political commitments, and tax adjustments in light of economic forecasts to set a fiscal framework that provides the constraints and priorities that shape the detailed plans of departments and programs;

- Each department, within this framework, develops plans and budgets (Reports on Plans and Priorities, a part of the Estimates) which are tabled in Parliament and referred to Standing Committees for their review, ultimately providing authority—through votes on an Appropriations Bill—to the relevant Minister for one year's funding for his/her department and agencies;

- Funds supplied during the annual parliamentary supply process provide a maximum level that can be withdrawn from the CRF to cover all activities within a vote for purposes described in the vote wording;

- Use of all funds by the government must be in conformance with the *Financial Administration Act* and Treasury Board policies based on the provisions of that Act;

- All funds must be accounted for and their use reported to Parliament through detailed financial reporting in the Public Accounts, as well as through Departmental Performance Reports, which include both financial and program results information; and

- All government financial reporting is subject to audit by the Auditor General.

The core machinery noted above likely would be characterized as very good by most experts in parliamentary financial oversight. Where there are substantial weaknesses, for example regarding the parliamentary review of the Estimates and supply, they are likely caused by the manner in which the instruments are used. To provide a more detailed context for consideration of possible improvements in the Estimates review process, the Annex to this paper summarizes the information included in the Estimates and expectations for parliamentary review.

Identifying financial misuse for the attention of Parliament within these core mechanisms depends principally on the Auditor General and PAC. Although House Committees have the power to investigate programs and their delivery, they tend to focus on legislation and policy matters. As noted in the paper by Malloy, the PAC relies mostly on reports of the Auditor General. Information on misuse in an Auditor General's report would most likely be identified in a departmental or program audit—something done typically over the cycle of several years. As illustrated in the Sponsorship Program, several years can pass between the occurrence of financial misuse and a subsequent committee review. As a result, a parliamentary investigation is likely to be hampered by changes in the Minister and many of the senior officials who would be most knowledgeable about the circumstances.

The Auditor General, MPs, and the media do receive information of financial misuse from the public and officials, and these mechanisms can lead to earlier investigations by the Auditor General or a parliamentary committee. Recent initiatives to provide additional protection for public service whistleblowers aims at strengthening this avenue for detecting misuse.

3.3

Parliamentary Powers and Accountability

Beyond procedures documented in the Standing Orders and formal legislation, there are two further factors which shape parliamentary financial oversight. The first is Parliament's powers to require the appearance of witnesses and its powers to require that the government provide documentation.[8] The second is the formal and informal interpretations of accountability.

While there is no suggestion that parliamentary powers need to be adjusted, the recent increasing use of subpoena powers by committees, the requirement that certain witnesses testify under oath, and the discussion in committees of the use of "contempt of Parliament" penalties have caught the attention of officials. While the use of such legal instruments are not welcomed by all parliamentarians, their use re-enforces in the minds of officials the significance of parliamentary hearings beyond the purely political consequences. It responds vividly to those officials who see Parliament as "a minor process obstacle." Whether the use of these instruments in recent years has sufficiently redressed the balance is doubtful.

It should be noted that according to parliamentary rules, such powers are limited to the chamber or its committees. Therefore, with strong party discipline in majority Parliaments, a governing party can effectively restrain their use. However, to the degree that the public recognizes that the exercise of such parliamentary powers is normal, there would be a compensating political cost to a governing party that used its majority to block their use in a committee's investigation. Such behaviour likely would become newsworthy.

Certain financial administration responsibilities are assigned to Deputy Ministers by the *Financial Administration Act* and subordinate Treasury Board policy guidance.[10] It is reasonable, therefore, that there be a direct accountability relationship between Deputy Ministers and Parliament. At the same time, the supremacy of Ministers in managing departments is also highly valued, suggesting that Ministers be directly accountable to Parliament for administration. Leaving this matter unresolved in the minds of MPs, Ministers and Deputy Ministers can lead to no one feeling accountable. In addition, the actual allocation of responsibilities as between Ministers, their staff and officials differs among Ministers and among programs. Such lack of clarity is an important impediment to effective parliamentary oversight.

To help bring greater clarity, the PAC has recently recommended that Deputy Ministers be personally and permanently accountable before parliamentary committees for administrative issues, unless there is a documented communication from the Minister concerned otherwise.[11] This idea has been debated for many years. As a recent paper by Ned Franks has pointed out, the PAC's investigation of the Sponsorship Program illustrated that the current system often seems to leave no one accountable.[12] We will consider the PAC recommendation as an adjustment to the parliamentary financial framework and, in particular, look in the next section of this paper at how this might impact on committee review and investigations.

4 Parliamentary Practices

The attention of MPs is committed to four principal areas of activity, each of which makes substantial demands on their time: specifically the House, committees, their party caucus and their constituency. While each MP decides on his or her personal priorities among these four tasks, it is risky to ignore any one of them. Inevitably this means that the time MPs have to address each of them is limited, particularly since some Private Members are also selected to participate for one or occasionally two weeks a year in inter-parliamentary activities. In addition, for almost all MPs, travel to and from their constituencies makes a substantial additional call on their time. In short, finding time is a problem for all MPs.

It is through meetings in committee, contrasted with the House and the caucus, that Private MPs have the main opportunity to devote attention to oversight of financial management. Substantial government documentation that is referred to all committees provides a foundation for serious analysis by committees. Government departments submit detailed statements at the end of February describing the programs for which they seek funding, and committees have until the end of May to review them and to vote supply. In addition, departments also provide, each autumn, a report on their performance in relation to previously tabled planning documents, material that is intended to provide a basis for assessing departmental achievements.

4.1

Why Committees have a Poor Record

Unfortunately, as noted in a previous section of this paper, committees have a poor record in reviewing departmental plans, performance reports and budgets. Most committees devote few meetings to the review of estimates, and some do not move to approve them, since under the Standing Orders, even if they have not been adopted by the committee, they are deemed to have been approved. Although there is no time limit for considering departmental performance reports and future plans, only a few committees turn to them and then usually to strengthen a committee report recommending modifications or additions to departmental programs.

There are a number of reasons why this has happened:

- Since the decision in 1968 that Estimates should be automatically referred to the appropriate standing committees, opposition Members have frequently set their goal on seeking reductions. They have shown negligible interest in using the opportunity to inform themselves on the operation of the department and in making proposals for changes in expenditure in future. Government Members, save for the minority Parliament of 1972-74, have used their majority to block all such moves. Although Ministers have usually been invited for one meeting in May to defend their Estimates, questioning has almost invariably had a politically partisan character. Given this situation, committees have normally chosen to direct their attention elsewhere, either to reviewing legislation (Bills referred to them have priority) or undertaking policy studies, which most Members find more stimulating and constructive;

- Committees have relatively little time, normally two sessions a week of one and a half hours each. Since the House sits for some 25 weeks a year, the average committee can count on 75 to 85 hours of meeting time each year. Even some of this time may not be available because, by convention, the chair waits to start the meeting until one Opposition Member is present. It is, as a result, not uncommon for meetings to begin some 15 minutes late. The restriction on the number of sessions each week has two causes: a limited number of committee rooms, a deficiency that will not be overcome until the current reconstruction program on Parliament Hill has been completed, and the fact that many Private Members sit on more than one committee to ensure that their Party fills its quota on each committee. Scheduling meetings for 20 committees a week is accordingly a complex task;

- Rotating the appointment of parliamentary secretaries every two years—a practice followed by Prime Ministers Chrétien and Trudeau—usually leads at the same time to the replacement of committee chairs. (This happens because the government fills the vacancies it has created with experienced members, frequently committee chairs. The retired parliamentary secretaries in turn press for appointment to another senior position, usually to one of the chairs that has been vacated. These shifts are possible since the government advises its Members on committees whom they are to elect as chair.) This practice, when combined with changes made for a variety of reasons each year in committee membership—changes in party priorities, personal preferences, illness—means that much committee time is spent in a learning mode. As a result of this turnover in membership, particularly that of the chair, it takes time to develop mutual confidence among MPs of different parties on a committee, a condition that is essential if members are to work well together. It is also difficult for the chair to plan an effective longer term work program, which is important given the limited time that committees actually meet. Although the Paul Martin government has asserted that competent parliamentary secretaries will not be rotated, the 38th Parliament has not been in office long enough to see if committee membership and chairs will be more stable, a development that could lead to improved performance;

- Nor is the time in committee meetings when examining Estimates used effectively. The small advisory staff (usually one and occasionally two per committee) supplied by the Research Branch of the Library of Parliament provides a range of questions on which MPs in committee may draw if they wish when their opportunity to ask questions arises. Members who are especially interested in a particular program may ask their personal staff to undertake some research to equip them to ask pertinent questions. But so great are the time demands that few members—save for those who have a background in the subject—come to meetings equipped to probe deeply;

- In addition, the questioning practice in committees, based on equitable treatment of MPs from all parties, makes it difficult to achieve sustained interrogation of witnesses. When a meeting opens, a fixed number of minutes are allocated to the opposition critic, who has his or her agenda, followed by a similar amount of time for a government Member, who will often put a soft question on a totally different theme. The result is that only committees with an effective chair and continuity of membership who share policy goals can aspire to agree on a common line of questioning; and,

- Finally, the partisan nature of Parliament makes it difficult and rare for committees when examining the Estimates and departmental performance reports to pursue a shared goal. This means that committees are rarely able to concentrate questioning on a single issue and get to the bottom of it.

The interaction of these several factors results in the Estimates emerging unchanged. And because they achieve little, most MPs find time spent on the Estimates unrewarding. Not surprisingly the average MP is more interested in advocating new or expanded program activity, which means, of course, more spending.

The moment is opportune. Members of all parties, government and opposition alike, are embarrassed that they failed to discover and draw attention to the corruption in the Sponsorship Program and, prior to that, to the excessive growth in expenditure on the gun registry. It should be possible at this time to get all-party support for specific changes in organizational support and in the way that committees work that could equip Parliament to discourage the misuse of funds within government and identify when it has occurred.

In our opinion, the oversight role of parliamentary committees can be significantly strengthened by two substantial but quite feasible changes. First, committees would have to develop more productive ways of working and reporting, and secondly, a financial analysis service would have to be created. These two proposals are linked: the introduction of either one without the other would largely nullify the potential benefit.

4.2

Financial Analysis Service

Few MPs have the previous experience needed to review and analyze the extensive and complex documentation provided by departments, and all MPs face time constraints. It therefore stands to reason that parliamentary committees need professional assistance to support them in monitoring the growing range and complexity of government programs. The Research Branch of the Library of Parliament does have a modest staff of about 100 researchers who are stretched very thin assisting the roughly 20 House and 20 Senate committees, as well as preparing research papers in response to questions from the over 400 Members of Parliament and Senators. Since committees are responsible for reviewing legislation in their field, the skills of Research Branch staff lie mainly in the social sciences and law, and not in financial and program analysis. Nor has the situation improved over the years. Indeed, it is not widely known that, as a result of steps taken in the 1990s to reduce the budget deficit, the resources actually available to the Research Branch are now significantly smaller than they were in 1993.

There are several factors that argue for greater and more specialized support for committees on review of the Estimates. The government documentation has increased in response to requests for longer term plans and more detailed information on performance and results achieved. There are now approximately 80 departments and agencies that provide reports on plans and on performance. Program delivery arrangements are becoming more complex. More programs are delivered through interdepartmental arrangements, with provinces and municipalities, with business and not-for-profit organizations, and with specially created independent organizations (for example, foundations, such as the Canada Foundation for Innovation). Many services are delivered through multiple delivery channels—in person, by telephone, through the internet, or through "one-stop" arrangements for an array of services. Such complexity helps citizens access the services they seek, but adds enormously to the complexity of administrative arrangements for their delivery. It likely also adds to the potential for ineffective use and misuse of public resources. In our view, if committees are to understand how resources are spent on programs, they require dedicated and highly specialized professional staff assistance able to advise and support them in carrying out their financial oversight of spending by departments.

For these reasons, we suggest the creation of a Financial Analysis Service within Parliament to support committees on this part of their work.[11] It would be dedicated to understanding government programs, plans and performance, as well as the mechanisms for providing funding and reviewing performance. It therefore would best be staffed by individuals having expertise in these matters. It also should include some staff with previous experience within government in planning, preparing estimates and reporting on performance to provide a greater sensitivity to the factors and language used in public reports. With this background, the cautious language in departmental performance reports might well be more transparent to them as to areas where problems might lie.

A dedicated Financial Analysis Service should have the capacity to undertake a continuing program of analysis on a year round basis, both to explore whether there might be areas of concern and subsequently to undertake research to determine if these issues justify examination by a committee. Given this kind of back-up support, committees would have a reasonable prospect of developing a better understanding of programs and their administration over the complete cycle of planning, providing resources and reviewing performance. With this heightened understanding they could react more promptly to risks and publicly expressed concerns regarding mismanagement. Just as financial planning in government is an ongoing activity linked to policy considerations, its oversight by committees to be more effective must be sustained over the year and more strongly linked to a committee's review of policy issues and legislation. To support committees in this way—a continuing committee engagement on programs, expenditures and results—the staff needs of such a service would be substantial—probably a minimum of 20 professional staff.

In our opinion, such a service should not be provided by the Office of the Auditor General (OAG) for a couple of reasons. First, the OAG is an Agency that guards its autonomy to decide where to devote its resources. Secondly, although the OAG submits its reports to Parliament and stands ready to defend them before committees, its auditors serve as witnesses rather than committee staff. The Financial Analysis Service that we propose would be more acceptable if MPs considered it to be a service of the House of Commons.

As a unit within Parliament, it likely would be most effective if organized similar in some ways to that of the legal services of the House of Commons. Decisions on how its resources could best be distributed among committees could be taken by the Liaison Committee, which is composed of the chairs of all standing committees and some vice-chairs to preserve inter-party balance. In recent years, it has developed a practice of evaluating requests submitted by committees for a share of the financial support it receives from the House to cover committee travel. In effect, it becomes a committee of peers evaluating the merit of requests received. It is likely that the greatest draw on its services would come from the Government Operations and Estimates Committee of the House of Commons, in view of its special responsibilities for Estimates review. To help ensure that the service is used productively by committees to strengthen financial oversight, a practice of requiring annual reports from committees of results achieved should be adopted, in effect holding committees to account for the support they received.

4.3

Improved Operations of Committees

No matter how competent the analysis undertaken by the proposed Financial Analysis Service, committees are the instrument designed by the House of Commons for actually conducting public inquiries and through them for holding government to account in a transparent manner in most financial matters.

The debate in the House and in the PAC occasioned by the Auditor General's Report and the publicity resulting from testimony before the Commission of Inquiry has generated pressure for a parliamentary response. Together these developments have the potential of motivating Members of all parties to look for effective ways to exercise financial accountability. The challenge is to establish conditions that make it possible for committees to do so.

It must be recognized that it is because results have been minimal that many MPs have shown little interest in committing their scarce time to reviewing departmental Estimates and performance reports. What could be done to change their attitude? During the minority Parliament of 1972-74, it is significant that several committees devoted considerable time to the review of Estimates. This experience suggests that Private Members are ready to spend time if they can see results from their efforts.

Since Estimates documentation is vast and complex, we consider that a Financial Analysis Service could be a necessary support, assisting MPs to decide where to focus their attention. We believe committee dynamics could also be improved if a practice innovated by the Joint Committee on the Review of Statutory Instruments were adopted, giving committees a tool for demanding attention. The Joint Committee is responsible for reviewing regulations promulgated by government to determine whether they are consistent with the enabling legislation. If the Committee judges that a regulation is not consistent, it asks the department to amend it. If the department declines to do so, the Committee has the power to ask the responsible Minister to debate the issue in the House on a Wednesday at 1:00 o'clock for one hour. Almost invariably when this happens, the Minister directs the department to reach an accommodation with the committee. Indeed, in some 20 years, only on two occasions did a Minister decide to debate the question in the House of Commons. This likely is because Ministers face even more time pressures than Private Members. Apart from not wanting to commit time to the debate, they are also reluctant to have to find more time to inform themselves of the technical issue in dispute.

The power that has proved so successful for the Standing Joint Committee for the Scrutiny of Regulations could be easily extended to committees reviewing departmental estimates and performance reports. Under Standing Order 108, committees can report to the House proposing the modification of a program in the following year and asking for a written reply. If the committee is not satisfied with the Minister's response to a committee report, which has in the past frequently been the case, it could, if the Statutory Instruments procedure were extended to committees reviewing estimates, ask the Minister to defend the department's position in a one hour debate on a Wednesday at 1:00 o'clock.

This practice would offer Members of a committee some prospect that their recommendations would be adopted. If they were not, they would have the opportunity to draw attention to their proposal through the debate in the House. Both of these outcomes have the prospect of escaping from the fruitless dialogue where some opposition Members propose a reduction in the Estimates, with government members resisting any reductions. In effect, if the Statutory Instruments practice were adopted, it could stimulate a more cooperative environment in committees when they were reviewing estimates.

The recently established Committee on Government Operations and Estimates has a very broad mandate including:

- Monitoring the effectiveness of government operations;
- Monitoring the expenditure plans of departments, agencies and Crown Corporations; and,
- Reviewing the process for considering estimates.

Notwithstanding the useful work undertaken related to its Estimates mandate, it has not yet fully exercised an Estimates review oversight role. The support of the Financial Analysis Service, if it were established, would help them do so. We also suggest that the Committee might undertake an inquiry if the Financial Analysis Service were to draw attention to a possible misuse of funds or recommend that another committee should do so. To strengthen its capacity, it would be appropriate to assign it an ongoing staff drawn from the Financial Analysis Service. Members might also be appointed to the Committee for the life of the Parliament so that they would have time to learn to work well together and to gain experience.

Past experience also indicates the need to improve some of the ways that committees work. Although outsiders can point to deficiencies and suggest changes that would be helpful, the partisan dynamics and the competitive environment among MPs of all parties mean that steps to improve working relations in committees must be worked out by Members themselves. This is particularly true of committees, since each of them has distinctive characteristics. Hence, we only point to some changes that could lead to better performance by committees.

It would make a substantial difference if committee membership was longer term than is now the norm, making it possible for MPs to remain long enough on a committee to develop cooperative relations with members of other parties on the committee and to acquire knowledge of the departments that report to their committee. The Martin government's decision to extend the appointment of effective parliamentary secretaries should also result in competent committee chairs being extended in office, a change in practice that could greatly improve the functioning of committees. British experience points to the validity of this approach. With 640 MPs in the British House of Commons, membership on policy committees is coveted and quite stable. This in turn has promoted a cooperative working environment.

It would also greatly assist if committees were able to agree on ways to use their limited time more effectively. As noted above, the interrogation procedure normally used by committees makes it almost impossible to undertake systematic questioning on critical issues. Although partisan politics will continue to be manifest in the House itself, the working environment in some committees has at times been cooperative for a number of reasons—a skilled chair who has developed good working relations with opposition members, some continuity of membership, very limited media attention, the presence of witnesses to be questioned and, frequently, spectators at meetings. This is not an area where a single set of directions can be proposed. Since the dynamics of committees differ, each one would have to experiment to determine what practices would work for them. In some instances, it might be possible to reach agreement within a committee that in certain situations, specific MPs in each party would be recognized as lead questioners on particular topics and even given additional time.

Finally, if committees were to submit a report annually to the Liaison Committee on their performance during the past year—an established practice of the British House of Commons—we believe this experience would prompt committee members to consider ways to improve their performance. In addition, this practice should lead to cross-fertilization among committees.

4.4

Review of the Vote Structure

Parliament formally provides authority during the supply process to a maximum level of resources for specific purposes as articulated in the vote wording.[14] The way government activities are grouped together for each individual vote can be an impediment to parliamentary oversight. The importance of this factor was especially vivid in the gun control debate when parliamentarians could not find how much money was spent on the program, in part because the funds had been merged for a period of time into a single vote together with funds for mainstream Department of Justice activities.

Over the years, the number of votes in the supply process has declined. The decline has had the effect of increasing the Executive's flexibility of realigning funds during the fiscal year without going back to Parliament in Supplementary Estimates for the authority to do so. This is not necessarily a bad thing. Good administration requires flexibility. Moreover, the supply process in Parliament is already burdensome. However, lack of attention on the part of Parliament and its committees to consolidation of votes on supply has effectively resulted in parliamentary oversight not being considered to be a relevant factor when the government pursued increased flexibility. The result is a weakening of parliamentary oversight.

Clearly, Members would find it advantageous if the vote on some significant programs—such as Gun Control or Sponsorship—were isolated, allowing them to monitor more easily multi-year expenditure and to compare cost and results. However, modification of vote wording and structure is a complex and time consuming procedure and would require extensive review by members of the Financial Analysis Service with departmental officials, who might be loathe to lose the flexibility afforded by the present more aggregated vote structure. This might be an initiative launched by the Committee on Government Operations and Estimates.

A related matter concerns the procedures for handling expenditure contingencies during the year. The current practice provides for contingency reserves to be established at the beginning of the year and the periodic Supplementary Estimates used for full approval of their application. Supplementary Estimates receive even less attention from parliamentarians and the media than the Main Estimates. In the view of some parliamentarians, a number of politically sensitive initiatives have been funded through this device, with consequent weak parliamentary oversight. Thus, while the current practice might serve the government's needs, it does so at the cost of weak parliamentary engagement and oversight. Addressing this weakness in parliamentary oversight would align well with the responsibilities of the Government Operations and Estimates Committee, but would require the support and expertise that the proposed Financial Analysis Service could provide.

4.5

Other Parliamentary Instruments

We have concentrated on the role of committees of the House of Commons because they offer the likeliest prospect of achieving improved parliamentary financial oversight. Debates in the House of Commons very rarely provide an opportunity to pursue financial accountability. They are usually initiated by consideration of draft legislation and focus primarily on policy rather than on administration. Within the House, the Question Period has become the Opposition's primary weapon for attacking the government. Consequently, exchanges in that forum are not suited as an instrument for seeking clarification of administrative problems that have become public. It does, however, serve one indirect beneficial purpose. Because the process can be politically damaging, Ministers rely on their departmental officials to advise them if problems have arisen that could be the subject of damaging questions and for which they could be held accountable. Not only does the process of advising Ministers daily of points on which they might be challenged in Question Period enable them to offer a considered defense, it may also lead a Minister to give directions that the problem be corrected. The Question Period can also be credited with putting so much pressure on Prime Minister Martin after the tabling of the Auditor General's Report on the Sponsorship Program that he made the decision to establish the Commission of Inquiry.

As for Senate review of estimates, responsibility for examining reports from all departments has been assigned to its Committee on National Finance. Given the scale of the Committee's responsibility and the constitutional constraints on the Senate's powers in the field of finance, it has concentrated on undertaking studies on broad administrative principles, such as when the Royal Recommendation is required and its ongoing review of the increasing use of foundations as an instrument for pursuing public policy objectives. Some years ago, it also carried out comprehensive and impressive studies of the Department of Regional Economic Expansion (DREE) and of the Canada Employment and Immigration Commission (CEIC). Each took over two years to complete. The less partisan environment and the expertise that Senators acquire through longer term committee appointments provide a good environment for in-depth studies of program management and financial administrative practices.

Our Senate is sometimes compared to the Australian Senate, which specializes in reviewing the Estimates and holding the government to account on financial matters. Given the demonstrated capacity of committees of the Canadian Senate to produce excellent reports on policy matters, some have wondered whether they could turn their attention to the Estimates. However, Australian Senators are elected (not appointed) by an electoral system different from that used by their House of Representatives. As a result, the Opposition often forms a majority in the Australian Senate, which can also bring down the government. These distinctive and unique characteristics that account for the power exercised by the Australian Senate have no parallel in Canada.

4.6

Parliamentary Reaction to Accounting Officer Proposal

In our opinion, a decision to clarify Deputy Ministers' responsibilities for the administration of their departments—or of specific programs, where there are variances from the departmental standard—along the lines advocated by the accounting officer proposals would help deter the development of situations such as arose out of the Sponsorship Program. Ministers clearly do not devote equal attention to all their programs, and there might well be cases where the public purpose would best be served by their engaging more directly in what would ordinarily be seen as the direct responsibility of officials. Provisions to render the apportionment of these responsibilities more transparent would not only impact on behaviour within government, but also could improve parliamentary committee review of departmental performance and their investigation of questionable financial stewardship.

Other studies have been commissioned on how Deputy Ministers might be made accountable before Parliament for the administration of their departments and on the advantages and disadvantages from the perspective of government of adopting this practice. We will not review these questions, but rather consider how Members of Parliament might react and respond if such a clarification in administrative responsibilities was introduced.

Once a program has been established and the broad policy formulated, there often remain practical decisions to be taken. Consider the Sponsorship Program. Even if there had been no corruption, a myriad of decisions had to be taken on an ongoing basis as to which events should be supported and which executing agencies should be selected. If an accounting officer approach, as interpreted here, had been adopted, it would have been necessary to document variances from standard procedures, including those relating to the involvement of the Ministers and their staff. Committee access to such information would likely have reduced somewhat the inter-party acrimony in the Public Accounts Committee investigation and the time committee members devoted to debating such questions. While in our parliamentary system, it is unrealistic to expect that MPs will not seek political party advantage in their parliamentary activity, any improvement in clarity by the government of responsibilities would reduce the opportunities for such committee activity and improve the value of their investigations and reports. Moreover, if committees feel, for example, that greater involvement of a Minister, or his/her political staff, adds to the risk of financial misuse in a specific program, they could use such a factor in deciding where to focus the time they allocate to such matters.

4.7

An Improved Appointments Process?

Some observers have suggested that increased parliamentary input into the process for appointing heads of Crown Corporations and agencies could result in appointments that would have greater all-party credibility. Before Prime Minister Martin had been elected to that office, as part of his campaign for overcoming what he had called the "democratic deficit," he had spoken in favor of having senior appointments to the Supreme Court and other government agencies reviewed by parliamentary committees. Consistent with his undertaking, during this 38th Parliament, committees have been given the opportunity to interview a number of nominees for senior positions before the nomination has been made. But it cannot be said that there is a high level of satisfaction with the process.

The wish of MPs to review appointments in committee is undoubtedly prompted by United States practice. The proposal first surfaced in Parliament in the report of the McGrath Committee in 1985. It had recommended that committees be able to interview senior appointments. Although the Conservative Government of Prime Minister Mulroney agreed to the request, it declined to accord to committees the power to approve or reject candidates, and in many instances, committees only had an opportunity to interview candidates after they had already been appointed. In this circumstance, committees were not enthusiastic about their limited new power, and it was used infrequently.

The first test of the concept during the Martin government occurred after the election but before the Speech from the Throne. Parliament was not yet in session. Two Justices of the Supreme Court having retired and with the same-sex marriage case pending, it was deemed important to appoint two new Justices quickly. A special committee of MPs of all parties was formed, but the government decided that rather than have the two nominees appear before the committee, the Minister of Justice would make the case for them. Not surprisingly, the atmosphere in the meeting was testy and the Conservative Party members of the committee were especially critical of the process. The two government nominees were appointed nevertheless soon after.

The impression left by committee review of two other appointments during the 38th minority Parliament has revealed the limitations and difficulties of the process. Bernard Shapiro, formerly Deputy Minister of the Department of Education in the Government of Ontario, the head of the Ontario Institute for Studies in Education and latterly

Principal of McGill University, appeared before a committee prior to his appointment as Ethics Commissioner to the House of Commons and received unanimous all-party approval. However, less than a year into office, he has been strongly criticized by all three Opposition parties, who called for him to resign because of dissatisfaction with—in their opinion—his tardy and cautious findings on two issues, one involving former Minister Judy Sgro and the other on the Gurmant Grewal affair. The criticism he has faced appears to stem from the fact that he had not adequately taken into account the contentious nature of the current Canadian Parliament.

The second case involved Glen Murray, the former mayor of Winnipeg and an unsuccessful Liberal candidate in the last election from that city. During hearings in the House Committee on the Environment and Sustainable Development to consider his nomination to chair the National Round Table on the Environment and the Economy, he was attacked quite viciously by members of the three opposition parties. His appointment was challenged as a pay off for having resigned as mayor to run for the Liberal Party. The Committee report to the House of Commons following the hearing called for his name to be withdrawn and another candidate proposed. The Prime Minister disregarded the report and appointed Murray as chair of the Round Table. The Committee retaliated by reducing the Estimates of the Privy Council Office by the amount of the salary being paid to Murray. Throughout the discussion in committee, Murray's capacity for the office was never considered. His Liberal connections were the only subject of concern.

These different experiences confirm that under the current practice even those whose nomination has been fully endorsed by a committee will have limited shelter from criticism. It seems clear that in the final analysis how the incumbent performs in office is the critical factor, but that obviously cannot be determined until sometime after the appointment. A principal concern of the opposition invariably appears to be the nominee's past connection with the government. Thus, the recent appointment of Yves Coté as Ombudsman for the armed forces was criticized by the opposition because of his past service in the bureaucracy, including in the Department of National Defence. Would he exercise independent judgment, it was asked. But Shapiro appears to have stumbled owing to lack of experience with Parliament. There is obviously a need for balance between independence and experience of the environment where the appointee will be working.

In the current political environment, there is probably no alternative to continuing with the present practice where candidates are questioned in committee, following which the government proceeds to make the appointment. As for appointments to the Supreme Court, the importance of that office is such that some new and plausible system for selecting Justices of the Supreme Court should be developed.

All of this suggests it is essential that, before candidates' names are made public for possible review by a parliamentary committee, the government follow a careful and rigorous process of selection. In effect, review by a committee is an opportunity for MPs to expose to the public the qualifications of candidates, their links to the government and to particular interests, the process by which they were selected, and sensitize the candidates to parliamentary interests—including their responsibility for financial stewardship. While the experience to date shows that committee review has delivered on few of these opportunities, this is an area that could have potential if handled carefully.

5 Summary of Recommendations and Conclusions

While Parliament cannot reasonably be seen as a cause of the financial mismanagement exposed in meetings of the Commission of Inquiry, we believe that improved financial oversight by the House of Commons would both promote improved financial stewardship by the government and also help identify more promptly instances of mismanagement and misuse of resources. Parliamentarians from both governing and Opposition parties acknowledge the need for such improvement. Recognizing the weakness, however, does not lead directly to successful corrective measures. Parliamentarians work in a very complex institution subject to many external pressures and must take care to balance career, party and constituency interests. Moreover, although the resources to support their work in constituencies have been increased, financial support for their work in committees has actually diminished in the last decade. The proposals summarized in this section are presented with these factors in mind.

Based on our experience, research and consultation, we propose that the Commission consider four key steps to strengthen parliamentary oversight of financial management. They all are linked to committees of the House of Commons, the fora that can best allocate the necessary time and priority to credible financial oversight. Three steps are directly related to the Estimates review process:

- Creating a Financial Analysis Service;
- Strengthening the Estimates review role of committees, with particular attention to the Government Operations and Estimates Committee; and,
- Initiating an ongoing review of the vote structure, with an early look at Supplementary Estimates.

A further suggestion is related to strengthening the clarity and transparency of accountability for financial administration in departments and agencies to help focus committee investigations on understanding what actually occurred and identifying responsibility.

5.1

Financial Analysis Service

The creation of a team of specialists in financial planning and performance reporting serving the Government Operations and Estimates Committee and the Estimates review of other committees of the House of Commons is a key step in helping Parliament play its financial oversight roles. Such an organizational unit would not simply await requests for service from committees but would undertake a continuing program of analysis, prepare briefing material on Estimates for all committees, and develop and deliver related training/orientation materials. The Financial Analysis Service would also support all committees in any investigations related to financial management. Finally, it would assist the Government Operations and Estimates Committee when undertaking special studies, such as related to supplementary Estimates, and assist the Liaison Committee in tracking the effectiveness of committee financial oversight.

5.2

Strengthening House Committees

The Government Operations and Estimates Committee has a strong mandate regarding Estimates oversight, which it should pursue more vigorously. The previous proposal should help it do so. In addition, we believe that the Liaison Committee needs to become more active, particularly in managing the support to be provided to committees by the Financial Analysis Service. But it is particularly important that all House of Commons committees with Estimates review responsibilities should upgrade their performance in this role. There is considerable literature on improving committee effectiveness, which each committee should consider carefully. In addition, we suggest that the Government Operations and Estimates Committee explore the feasibility of extending to committee review of Estimates the power accorded to the Joint Committee on Statutory Instruments to require, when a committee feels that government's response to its report is inadequate, that the Minister debate the issue raised by the committee in the House on a Wednesday at 1:00 o'clock for one hour. Such an adjustment would add an incentive for committees to review Estimates more vigorously.

5.3
Ongoing Review of Vote Structure

The authority to spend money through the supply process depends on the groupings of activities included in a single vote and the wording in the vote as to the purpose of the spending. While the government needs a degree of flexibility to organize the financing of its activities as it sees fit, Parliament should be equally engaged in this process to ensure parliamentarians can reasonably understand the groupings of activities, the results identified for them, and how the resources applied would reasonably lead to the results promised. Working with the government on the continuing update of the vote structure would require the engagement of each committee, but also the attention of a focal point such as the Government Operations and Estimates Committee. It would also benefit from the expertise that could be provided by the Financial Analysis Service.

We also propose a related study of Supplementary Estimates. While the current practice might satisfy the government's need for flexibility to deal with unexpected urgencies, it does not provide for adequate parliamentary review or public transparency. Such a study should examine ways to provide a more balanced approach.

5.4
Clarifying Administrative Accountability

The fourth suggestion is related to the proposal of the Public Accounts Committee that Deputy Ministers should be designated as accounting officers for their departments. In addition to the value within the public service from such a step in clarifying administrative accountability, it could improve parliamentary committee investigation of specific incidents or questionable financial stewardship. From the perspective of parliamentary oversight, much time and inter-party acrimony is directly related to a difficulty in identifying who is in the best position to explain such incidents. In our political system, it is unrealistic to expect parliamentarians not to seek political party advantage. However, the proposed improvement in clarity of accountabilities by the government could reduce the opportunities for unproductive committee partisanship.

5.5

Conclusions

We believe that these four initiatives would strengthen parliamentary financial oversight by significantly enhancing the understanding by MPs of how government uses public resources to achieve policy results. Such improved understanding and committee attention is likely to reinforce the government's own initiatives to strengthen financial oversight. In addition, parliamentarians and committees, with the assistance of the Financial Analysis Service, would be in a much better position to identify areas of activity where the risks of mismanagement are higher, enabling them to direct increasing attention to those areas. If the accounting officer idea were adopted by the government in a way that clarifies administrative responsibilities of Ministers and officials in specific cases, investigations by committees when questionable situations had arisen would likely become more focused on finding out what had actually happened.

While we believe that this package of initiatives would make a noticeable difference, we are not arguing against other changes in Parliament. For example, we raised the issue of the adequacy of investigative powers of the Public Accounts Committee, particularly during periods of majority government, but have not looked at the matter because that committee is being examined in another study. Nor have we proposed any specific actions for earlier identification of misuse of public resources, such as might be encouraged by effective whistleblower legislation. These might well be useful steps to take. While we have stressed the need for effective House committees that have the organization and resources to exercise financial oversight and to detect some misuse of resources, it must be recognized that different instruments will be effective in different situations. To use the vernacular, there are different ways of catching flies.

Annex:
Parliamentary Review of Estimates and Supply

The Estimates—a package of government documentation—grew out of the need for Parliament to approve the Crown's access to public funds to deliver its programs. The parliamentary process leading to the annual approval of those funds—known as the "business of supply"—is based on government proposals and documentation to justify those proposals. This process can be traced back to Confederation and earlier. Although both the Estimates and the supply process have evolved, their history provides a useful context to understanding current practices and the kinds of changes that might be considered without adjusting their fundamental roles. Two changes over the years are particularly relevant.

First, as government became more complex, it instituted a government-wide budget, initially largely for improved internal financial discipline. The budget related the government's legislative obligations and its political commitments to economic conditions in the country. Such analysis provides a basis for decisions on tax increases or decreases, on total spending, and on surpluses or deficits. Much of this information is now tabled in Parliament as the Budget or in the Budget Papers. Decisions on total spending are based on forecasted costs of statutory programs (those financial commitments funded through authority in statutes—that is, those not funded through annual supply), the need to cover interest on aggregate government debt, and government priorities regarding its programs and activities. In response to the institution of a government budget, the Estimates have evolved from an earlier relatively straightforward estimate by Ministers of the cost of their mandated activities, to providing information affected by government priorities and the need to fit resource requests into the overall government financial framework. The Estimates, arguably, have become the reality check for government policy pronouncements. In other words, if one wants to know what the government is doing and what it plans to do, the Estimates should be an excellent place to look.

Second, in view of the historical importance of the people's elected representatives approving the funds spent by the Crown, structured procedures were set up and time allocated in the Committee of the whole to permit a thorough review before the funds were granted. While the purpose was to provide funds, supply in effect was a major instrument in holding the government to account. Ministers had to satisfy their parliamentary colleagues before supply was granted. However, during the Pearson governments of the 1960s the opposition began to approve supply on a monthly basis only. To circumvent this problem, following inter-party negotiations, a new procedure was put in place in 1968 under which the appropriate Estimates were referred each March to the relevant standing committees, which were given three months to review them. In part, these changes were seen as providing greater expertise and much more time to deal with the expanding content of the Estimates. As a *quid pro quo*, the government gained the assurance of getting supply through the House on time. Many observers and participants at the time saw these changes as offering the prospect of strengthening the financial oversight role of the Estimates review.

While committee review has weakened, as noted in the paper, documentation in the Estimates has expanded. Each department and agency now prepares, in addition to the core estimates for one or more supply votes, a Report on Plans and Priorities. These reports, which are now submitted in March, outline both forecasted expenditures and expected results from those expenditures for each of the upcoming and two additional years. They are expected to justify the need for forecasted expenditures or unexpected changes in the level of expenditures. In addition, each department and agency submits a Performance Report in the fall, usually about the time the Standing Committee on Finance begins its pre-budget deliberations and consultations. These reports describe performance related to past plans and are expected to explain any variances from those plans. As part of the Estimates, they are automatically referred to the relevant committee. Departments also provide references to more detailed information accessible on their website or elsewhere. Documentation has expanded for another reason. The Estimates, as a disciplined and regular reporting instrument for each department, provide a convenient vehicle for other parliamentary reporting requirements. Considerable related reporting required by Parliament is now incorporated in these reports. For example, the Agriculture and Agri-Food Canada Performance Report includes its Annual Report of the Department of Agriculture as required by the *Department of Agriculture Act* and the annual report required by the *Farm Income Protection Act*.

The Estimates, accordingly, provide extensive and updated information on the government's use of public resources. Unfortunately, more documentation on government plans and performance cannot, by itself, be equated to improved accountability, a relationship requiring the engagement of both parties. The House of Commons committees have not been actively engaged in specifying the information that they wish to receive or in defining the activities to be included in each supply vote. Moreover, committees seem not to pay attention to the financial oversight role throughout the year, nor are they linking the planning and performance information in the Estimates to their policy studies. There are exceptions. The Public Accounts Committee regularly reviews the Auditor General's annual Reports on Plans and Priorities and Reports on Performance. The Standing Committee on National Defence and Veteran's Affairs, during the 37th Parliament, linked their supply work with their policy study. A few other committees have recently instituted more rigorous review of the Estimates as part of the spring supply process. Nevertheless, the potential financial oversight value of the Estimates documentation and provisions in Parliament for its review is now far from being realized.

Endnotes

[1] Other papers in this package address specific related matters, such as the Public Accounts Committee, the *Financial Administration Act*, Access to Information, whistleblower legislation, and a proposal that deputy ministers be made accountable for departmental administrative decisions. Accordingly, we address the question more broadly, identifying other specific areas that we believe are relevant to the central questions posed.

[2] Assertions in this paper regarding views of MPs are based on the authors experience over the last 30 years in working with and interviewing Members on related matters. Colleagues at the Parliamentary Centre also reviewed drafts of this paper.

[3] See Peter Dobell and Martin Ulrich, *Building Better Relations*, Occasional Papers on Parliamentary Government, Number 13, May 2002 for an assessment of relations between officials and House of Commons committees.

[4] As we have seen in the case of the Sponsorship Program, this might also lead to the establishment of a commission of inquiry.

[5] Over the last twenty or more years, governments in most OECD countries have undertaken initiatives to sharpen their focus on results and serving citizens, in part by streamlining administrative rules and procedures (reducing "red tape"). It might well be that the need for such streamlining was, in part, caused by the accumulation of additional rules and procedures in responses to earlier incidents of misuse.

[6] Peter Dobell and Martin Ulrich, "Parliament's Performance in the Budget Process: A Case Study," IRPP Policy Matters, (May 2002).

[7] For example, only the Public Accounts Committee has regularly reviewed a departmental Performance Report and that was of the Office of the Auditor General, a parliamentary agency.

[8] Jonathon Malloy, "The Standing Committee on Public Accounts: Report to the Commission of Inquiry into the Sponsorship Program and Advertising Activities," Department of Political Science, Carleton University, August 24, 2005.

[9] See Derek Lee, *The Power of Parliament's Houses to send for Persons, Papers and Records: A Sourcebook on the Law and Precedent of Parliamentary Subpoena Powers for Canadian and Other Houses*. (Toronto: The University of Toronto Press, 1999).

[10] See Peter Aucoin and Mark D. Jarvis, *Modernizing Government Accountability: A Framework for Reform*, Canada School of the Public Service, 2005 for a comprehensive look at the core ideas and how they are applied in the government of Canada.

[11] Public Accounts Committee, House of Commons, Canada, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability*. (Ottawa, May 2005).

[12] C.E.S. Franks, *Ministerial and Deputy Ministerial Responsibility and Accountability in Canada*. A Submission to the Public Accounts Committee of The House of Commons, January 17, 2004.

[13] The Aucoin and Jarvis paper referenced earlier proposes an alternative approach — an independent parliamentary agency — to providing certain of the services we are proposing.

[14] In other cases, such as major transfer programs, specific authority is contained in statutes. The Estimates documentation includes this related information and committee review is not constrained to look only at matters related to annual supply.

THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

Jonathan Malloy

1 Introduction

This paper examines the House of Commons Standing Committee on Public Accounts. While the Public Accounts Committee (PAC) has an important role to play in government accountability, its effectiveness is hampered by several weaknesses. These weaknesses are largely rooted in the overall context of the parliamentary and political system and are not easily changed. This larger context includes:

- The heavy turnover of parliamentary committee membership;
- The general lack of interest among MPs in accountability issues;
- The difficulty of distinguishing between issues of "policy" and of "administration"; and,

- The unclear status of public servants before parliamentary committees and in the accountability system more generally.

Each of these factors has considerable effect on the operations and impact of the Public Accounts Committee. They are also intertwined with much larger issues of parliamentary representation and responsible government.

The PAC is part of the overall standing committee system of the House of Commons, and this is essential in understanding its role. While the PAC is *sui generis* in its mandate, it is one of 20 committees at present, and by no means considered the most desirable of these committees for assignment.

If we assume a committee can only be as good as its members, the PAC faces serious challenges. Its membership changes constantly. Many of its members do not seem to value, much less covet, the assignment; nor do they necessarily have appropriate backgrounds or experience to investigate issues of government administration. Discussions of the Committee that fail to note these issues risk overestimating its abilities and members' enthusiasm for their role.

Another major concern surrounding the PAC is the lack of rules surrounding the testimony of public servants before parliamentary committees. While public servants appear regularly before the PAC and other committees, the expectations and understandings surrounding their appearances can be very unclear. What questions can be asked? When should a public servant defer to answer what is deemed a "political" question? Without precise standards, it is up to members to struggle over these questions, often for their own tactical advantage.

The Committee relies heavily on the Office of the Auditor General (OAG) for its agenda and the Auditor's investigative resources, to the extent that it has little capacity and perhaps little desire to conduct its own independent investigations. Instead, the PAC serves as a forum for discussing OAG findings and holding government to account.

But the massive profile and esteem enjoyed by the Auditor General may mean that PAC members find little political visibility or reward in their roles. This paper examines this key tension and notes how the PAC does seem to labour in the Auditor's shadow. However, it is not clear whether the Committee would benefit from some type of expanded role, given its status as a standing committee of Parliament rather than a truly autonomous body. Instead its most effective role may be to amplify the findings of the Auditor General as it now already does. For the Committee to improve or expand its role, there must be larger changes in the parliamentary culture and greater clarity in how Parliament can hold public servants to account.

2 Background

2.1
History

The House of Commons has had a Public Accounts Committee since Confederation, with the mandate of reviewing the public accounts of the Government of Canada and the reports of the Auditor General of Canada. The exact wording of this mandate has changed over the years, and the Office of the Auditor General has changed considerably, along with the procedures by which the Committee and Auditor General interact. The actual activity of the Committee has waxed and waned over the years, along with the entire Commons standing committee system.

According to Norman Ward's exhaustive 1962 study, *The Public Purse*, in the early decades after Confederation, the Committee had a lively history of scrutinizing public expenditure large and (mostly) small, in a condition of "frank and shameless partisanship." But the PAC declined markedly after the First World War, meeting erratically and sometimes not for years at a time, and apart from a brief renaissance in 1950-52, it was ineffective when not entirely dormant. Writing in 1962, W.F. Dawson argued that "[i]n the Committee on Public Accounts the Canadian House of Commons has had the unusual experience of having a committee which has become more inactive" and that "[a]ll parties seem to have lost interest in the principle and faith in the proceedings of the Committee."

Many of the historic problems of the PAC resemble those of today. From the start, the Committee appears to have lacked depth and commitment among members to the serious investigation of financial and administrative matters, unless there was an obvious partisan payoff. In the immediate post-Confederation years it was common for Ministers to sit on and even chair the Committee, while the Auditor General of course was an official of the Department of Finance rather than an independent officer of Parliament. The Committee was crowded with usually 50 or 60 members, similar to most parliamentary committees up until the 1960s, limiting its ability to integrate and work together as a dedicated group.

While the independence of the PAC and Auditor General grew, the Committee did not develop a correspondingly mature perspective. For example, Ward documents how the 1896-1905 version of the Committee produced 40 substantive reports, but "thirty-seven of the substantive reports had little to do with parliamentary control of finance in any objective sense, but were frank attempts by one political party to unearth and publicize evidence that would embarrass the other." In contrast, the contemporary British PAC maintained "an influential voice in determining the principles on which public expenditure was made." Such points can easily be made about 2005 as well as 1905.

After its long dormancy in the mid-20th Century, the PAC was revitalized in 1958, most notably by the resolution by the House to draw the PAC chair from the opposition. Change also came with the general overhaul and revitalization of the entire standing committee system in 1968 and the further McGrath reforms of 1985-86, although the effect was more on the context of the PAC rather than the Committee itself. More directly important perhaps was the evolution of the Office of the Auditor General in the 1970s and 1980s, with wider statutory authority and an increasing stream of interesting reports for the Committee to digest. We now turn to the modern PAC and its current challenges.

2.2
Mandate

The current Standing Order 108 (c) of the House of Commons describes the basic mandate of the PAC:

> Public Accounts shall include, among other matters, review of and report on the Public Accounts of Canada and all reports of the Auditor General of Canada, which shall be severally deemed permanently referred to the Committee immediately after they are laid upon the Table.

In its own documents, the Committee further describes its function in plain language:

> When the Auditor General tables a report in the House of Commons, it is automatically referred to the Public Accounts Committee, Parliament's standing audit committee. The Committee then selects the portions of the report it wants to scrutinize and calls public servants from audited organizations to appear before it to explain the Auditor General's findings. The Public Accounts Committee also reviews the federal government's consolidated financial statements—the Public Accounts of Canada—and attempts to identify financial shortcomings of the Government in light of issues raised in the Auditor General's report. The Committee then makes recommendations to the Government for improvements in spending practices.

The Committee's close association with the Auditor General of Canada is evident here. According to the same document, "90-95%" of committee business involves discussions of Auditor General findings, and the Auditor General commonly appears before the Committee.

The committee has no significant investigative resources of its own beyond parliamentary library research staff. Unlike most standing committees it almost never travels, nor does it generally invite written or oral submissions from outside groups or the general public. Instead, its time is spent largely hearing testimony from individuals associated with the Auditor General's findings—starting with the Auditor General and his/her key staff and moving to relevant political and bureaucratic actors.

3 The House of Commons Context

Having reviewed the background of the Committee, we must now put it in its parliamentary context. The PAC is unique among House of Commons standing committees in several ways. Most obvious is that the PAC chair comes from the Official Opposition. The most substantive difference though is the PAC mandate to review government activities on a financial and administrative basis. Most standing committees spend their time considering Bills and investigating policy issues. The PAC's mandate is much more retroactive than prospective; it reviews what has occurred and makes recommendations based on what it learns.

The PAC is also unique because of its relationship with the Auditor General. Other standing committees generally have a corresponding government department, over which the Committee is expected to have at least some oversight. While the PAC does have oversight over the OAG, the OAG normally serves as a resource and not an object of inquiry itself. While similar relationships exist between parliamentary committees and other officers of Parliament such as the Commissioners for Privacy, Freedom of Information and Official Languages, the PAC-OAG relationship is much wider in scope and mandate.

Yet while it is *sui generis*, the PAC is best understood in the overall context of Commons committees. From the perspective of MPs, the media and general public, the PAC is but one of many such committees, and it certainly struggles with similar issues and dynamics to those faced by others. We will thus briefly look at the overall committee system and key issues surrounding it, before looking again specifically at the PAC.

3.1

The Committee System

Proposals for parliamentary reform commonly zero in on the House of Commons committee system and recommend its strengthening. Yet repeated attempts to do more with committees, have met limited success. The committee system embodies the basic problem of defining the role of Parliament in Canadian politics. There is no consensus on how to balance party discipline with the beliefs and constituency identities of MPs, all in conjunction with the demands and constraints of responsible government. We will not have an extensive discussion here, but highlight themes of relevance to the PAC.

In 1971, C.E.S. Franks pointed out the basic dilemma of the Committee system—the struggle to engage in relevant debates and inquiries without being seen to challenge the Government's prerogative and triggering party discipline. The basic question for committees often is whether to investigate relatively obscure topics, where reports might be written by consensus but will be widely ignored, or to dive into more timely issues in which members feel tremendous pressure to follow party lines.

The McGrath-inspired reforms of 1985-86 and other changes have not solved this primary dilemma. However, in recent years governments have more actively sought to find satisfying roles for committees. For example, since the mid 1990s, the Standing Committee on Finance has held "pre-budget hearings" on behalf of the Minister of Finance. While it is difficult to say how influential these hearings have been on the final budget, they are an accepted part of the process and appear to be a valued role for the Committee. Similarly, committees are occasionally asked to draft bills or study issues in which the Government is not sure how to proceed. However, draft studies remain exceptional rather than routine, and of course, committees depend on the Government's invitation in the first place.

Committee assignments are made by party leaders and whips, with only limited input from members themselves. Assignments are shuffled every parliamentary session and sometimes in between, particularly in response to shuffles of parliamentary secretaries or critic portfolios. Committees themselves expand and contract in size, partly due to the need to replicate as closely as possible the mathematical standings of the parties in Parliament. MPs may be shuffled off committees as penalties for insufficiently supporting the party, although it is rare for members to be removed permanently in the middle of a parliamentary session. Instead, substitutes are sent to hold the party line. The result is committees with rotating and sometimes indifferent membership.

Governments often argue that committees have unrealistic expectations. Ministers may accuse Canadian MPs of envying American congressional committees, which do have significant powers over government policy. In contrast, Canadian institutions work in the framework of responsible government, which concentrates power but also responsibility in the Government and Cabinet. If committees wield too much power over policy, it is argued, accountability becomes unclear.

Instead, governments use committees to gather information and test ideas—whether in draft studies, public inquiries, or consideration of Bills—while reserving the final decisions for Ministers. I have argued elsewhere that committees may indeed have inflated expectations that lead to disappointment and miss other contributions. In particular, committees underplay the above role of gathering information and testing ideas—essentially serving as a public forum for key issues of interest to governments.

The Senate has its own committee system, which is generally regarded as more thoughtful and less partisan. Senate committees appear to understand their limitations more and are less likely to have unrealistic expectations about their potential influence. They also have less member turnover, giving some committees quite substantive collective knowledge and memory. Senate committees can in some ways serve as role models for Commons committees. But their membership and context is different enough that the lower House may not be able to replicate the strengths of the Senate committees.

Even as committees struggle to establish their roles and identities, other important ambiguities remain. Among the most important are the expectations for public servants appearing before committees. Put simply, it is not always clear what questions should be posed to public servants in committee hearings, nor how they should answer. This stems from larger confusion between public service responsibility and ministerial responsibility in Canada. There is genuine confusion about what constitutes a "political" question, which a Minister should answer, versus an "administrative" question that can be posed to a public servant who possesses the requisite knowledge and whose answer is unlikely to appear politically biased.

3.2

The Relevance for PACs

The ambiguity surrounding Commons committees has clear impacts on the PAC. The often arbitrary methods of assigning MPs to committees has profound impacts on PAC activities and collective memory, and the general ambiguity surrounding committees leaves unclear the exact purpose of the PAC, even though its mandate is unique. The problems surrounding public service witnesses are particularly relevant to a committee that rarely hears from any other group except the Auditor General and her staff.

As we will see below, the PAC rarely retains members for more than one or two years, with only a small handful lasting even five years on the Committee at any given time. This is typical for Commons committees. This creates little institutional memory in committees or bonds of trust and commitment across party lines. While not unique to the PAC, this does not allow members to develop a broad and sustained interest in issues of government administration and accountability.

The Committee also struggles with the same problem as other committees: reconciling scrutiny of government activities with partisan loyalties. But the dilemma is somewhat different for the PAC. Other standing committees can and do launch policy inquiries in which political parties have limited interest—the problem then is consensus reports that go nowhere. But the PAC does not investigate "policy" but rather administration (including administrative policies) of the Government. The problem then becomes distinguishing issues of administration—which may be seen as non-partisan—from those of policy, which are difficult not to view in partisan terms.

There is an age-old debate about whether politics and administration can be seen as a "dichotomy," and the PAC is in the thick of this. Committees find it difficult to avoid politicizing issues, particularly when there is public and media interest and given MPs' partisan identities. Consequently, while much emphasis is made on investigating "administration" rather than "politics", there are triggers and traps everywhere that create partisan disagreement and sometimes committee breakdowns—particularly on issues attracting media interest and public controversy.

4 Components

We will now shift to looking at the different components of the PAC—the members, the chair, and staff. This will highlight particularly the issue of membership turnover as well as their often limited interest in accountability matters, before looking more closely at the actual work of the Committee.

4.1

Membership

Like all Commons committees, the PAC membership changes regularly. Information for this section is drawn from the sessional membership rolls of committees from the end of each parliamentary session. The data actually overstate the degree of continuity and stability of committee membership, since they do not reflect reshufflings during sessions or the widespread use of membership substitutions during individual meetings. The prevalence of substitutes will be illustrated in our later examination of the 2004 Sponsorship Inquiry.

Looking at the last three Parliaments, a total of 64 MPs have sat on the PAC since 1997. The current (August 2005) version of the Committee is one of the most inexperienced ever. Eight of its 12 members were first assigned in Fall 2004 following the June general election, with only three continuing directly from the previous Parliament.

Returning members in Fall 2004 consisted of the Chair, John Williams, and Liberals Shawn Murphy and Walt Lastewka. Mr. Murphy had been on the Committee since 2000, but Mr. Lastewka only for the previous parliamentary session that began in February 2004. (The fourth member, Benoit Saveaugeau of the Bloc Quebecois, had served on the Committee for one parliamentary session in the late 1990s). Thus, only the Chair and Mr. Murphy had more than a year's continuous experience on the Committee when the present version was struck.

Even more remarkably, six of the eight new members were newly elected in 2004; another was first elected in a 2002 by-election and the last in 2000. Only three members, including the Chair, had more than four years experience in Parliament when the Committee was struck in 2004. The current Committee is thus very inexperienced both in Committee service and parliamentary experience generally.

This inexperience is due partly to the high turnover of MPs in 2004. In the 3rd session of the 37th Parliament (the first Martin government before the 2004 election), the Committee had 16 members with a wider range of parliamentary experience.

This version of the Committee had more experienced MPs—12 of the 17 (including the Chair) were in their second or greater term in Parliament. However, the lack of experience with the Committee itself remains revealing. Of these 17 MPs, eight were not previously on the PAC before December 2003. A further three were not on the Committee for the 1st session of the 37th Parliament in 2001-02. Furthermore, none except Mr. Williams served on the Committee before 1997.

Thus, only six individuals served on the Committee for the entire 37th Parliament from 2001 to 2004. Of these six, only two remain on the Committee in 2005.

Looking back even further, only two members—Beth Phinney and Philip Mayfield—sat on the Committee continuously from 1997-2004, along with the Chair, Mr. Williams, who was in turn the sole remaining member of the pre-1997 Committee. Another MP, Paul Forseth, sat for four of the five parliamentary sessions of that period. Of these four, only Mr. Williams remains (Mr. Mayfield did not run for re-election in 2004). During that same seven-year period, another 54 MPs sat on the PAC at one time or another.

These numbers make it difficult not to see the PAC as a revolving door, with members constantly coming and going. While a small core serves for a few years, half or more of the Committee has been brand new in the last two parliamentary sessions. John Williams is the only member of the current Committee to have served more than five years on it.

When combined with a general lack of parliamentary experience among members, the result is a Committee lacking institutional memory, continuity of focus or inter-party relationships. As one interviewee put it, the Committee constantly has "to go right back to square one and reinvent and re-educate themselves." It also obviously places Mr. Williams in a unique position—a point we will explore in a minute.

These patterns are normal for House of Commons committees. Examination of other randomly-selected standing committees shows that the PAC is similar in having significant turnover between parliamentary sessions and only a handful of longstanding members.

Public Accounts is thus not atypical of House of Commons committees. However, one Committee member suggests the PAC is particularly ill-served by so many new members. "I think it's bad to have a new member on the Committee at all…Public Accounts should not be a learning Committee for new MPs." This MP argued that the wide scope of PAC work and its occasional high profile was not suitable for inexperienced MPs with little knowledge of either Parliament or government, since "the learning curve is accelerated."

As noted, these data actually underreport committee turnover in two ways. First, membership lists are drawn from the end of parliamentary sessions and do not include changes during the session. Furthermore, substitutes are allowed.

One hundred and six MPs are currently recognized as substitutes or "associate members" of the Committee. Associate members can and do replace regular members, ostensibly to cover unavoidable absences or because the subject is of particular interest to the associate. However, substitutions are commonly used by all parties to bolster their partisans. Independent-minded members may be temporarily replaced with strong loyalists, or frontbench critics will suddenly appear to participate in high-profile inquiries. We will see below that in the 2004 Sponsorship Inquiry, regular members from both the Government and opposition were replaced with substitutes who led the charge for their side.

The reasons for membership turnover on Commons committees have long been explored and are generally agreed. As mentioned earlier, committee assignments are made by party Whips, who do solicit preferences from members but often assign them to committees in which they express no prior interest. Assignments are overhauled every parliamentary session and in response to shuffles of parliamentary secretaries or critic portfolios. Committees themselves expand and contract in size, partly due to the need to replicate as closely as possible the mathematical standings of the parties in Parliament.

But instability is exacerbated when MPs themselves do not value their assignments. Committee chairmanships themselves are valued because of their public prestige and supplemental salary, but not as much as parliamentary secretaryships, leading to further shuffles and turnovers as parliamentarians climb the greasy pole of ambition.

Many observers argue that the Canadian House of Commons is not large enough to sustain its standing committee system of 20 standing committees for 308 members, some of whom hold cabinet or other leadership positions and do not sit on committees. Many MPs, particularly from smaller parties, must sit on more than one committee and are clearly overstretched. The prize of cabinet membership also distracts many members from building committee careers. In contrast, the British House, with 646 members, is often said to be so large as to encourage MPs to give up cabinet ambitions and seek satisfaction through committee work.

None of these issues are particular to the PAC. But the PAC may struggle with a further image problem; few MPs consider it to be a desirable assignment.

4.2
Member Interest

Members of Parliament often do not seem to put a high priority on issues of accountability and scrutiny of government administration. Surveying different cohorts of MPs in the early 1990s, David Docherty asked them to rank the importance of various duties. While veteran and rookie MPs disagreed over the importance of some functions, both rated "acting as a watchdog on government" the lowest of five roles behind "protecting riding,""helping individuals,""keeping in touch" and "debating in the House of Commons." In a follow-up survey of the newer cohort, Docherty found they still ranked the watchdog role low, although it was now higher than debating in the House.

Other research has also detected a lack of interest in accountability and administrative matters among Canadian MPs, compared to the idea of influencing future policy. Aucoin and Jarvis observe that "a political culture that gives Parliament a strong role in holding the Government to account has not been established. Among MPs themselves, the scrutiny function of accountability is far down their list of priorities, well behind playing a role in policy formulation and serving their constituents in their contacts with government."

Interviews with current PAC members found similar attitudes. One committee member said bluntly that accountability "was not the motivating factor for why most of us run…instead we have visions for the country." Several MPs contrasted the PAC with other "policy" committees and expressed a distinct lack of interest in the Committee and its exclusive focus on accountability.

When asked why he was assigned to the PAC, one MP said, "I don't know…I just got put on here. I didn't ask for it. I just came up here as a new member. I didn't really know what the PAC was." Another said PAC was "not a committee I'd asked to be on." While it was "fairly desirable as a secondary committee," he would "like to have a policy committee" as his primary assignment. A third said, "Would I prefer to be on another committee? Yes." He went on to say, "I guess some people like Public Accounts, but if I went around the room and asked, I think each and every one would want to be on another committee."

This lack of interest may be particularly acute for newer MPs, as part of the more general ambiguity and unclear expectations surrounding the role of MPs. One observer of the Committee said of its new members: "[t]hey all come from having beaten their policy drums in the election, then they come down here full of vim and vigour convinced they were going to get policies adopted. They discover the Public Accounts Committee doesn't even do policy."

The lack of interest in administrative issues is not just the immediate whim of members; it is clearly part of the entrenched parliamentary culture. Passed down from veteran to new members, it is reinforced by the difficulty of distinguishing contentious policy struggles from the quest for good administration. Aucoin and Jarvis note "… there has not been a tradition or culture that legitimizes, even promotes, the public value of government MPs cooperating with Opposition MPs in a non-partisan manner in committees in holding ministers and officials to account." In fact, the rough-and-tumble partisanship of Question Period, amplified by media coverage, provides exactly the opposite tradition.

In turn, there is little real public demand for such a role for MPs. Aucoin and Jarvis state "the value of robust parliamentary scrutiny is not sufficiently recognized in the broader political system." Members, being politicians and human, do not like to do work that is not recognized and rewarded. As we will see, reports on administrative matters receive little media coverage unless there is obvious conflict to report.

As a final note on PAC members, we must note that there may be more interest in PAC service in provincial assemblies in Canada. While all provinces have a PAC (sometimes by another name), most do not have established and regular standing committee systems. Provincial PACs may therefore attract more interested members who value their assignment because there are few other options.

The PAC thus has a constantly rotating membership, much of which does not seem to value the assignment, much less covet it. There are two other components of the Committee that warrant examination as well—the chair and staff.

4.3

Chair

Like the Speaker of the House or Senate, the role of committee chairs is nominally neutral. They are responsible for maintaining order, ensuring the rotation of questions by members, and ruling on procedural questions, all in an impartial manner. However, chairs are more than just timekeepers and can play very significant roles. This is particularly the case for the PAC chair since, unlike government members chairing other committees, he/she cannot aspire to Cabinet as long as his/her party is in opposition. With no place to go, they may value their position more. This is certainly the case for John Williams—a PAC member since 1993 and Chair since 1997, and widely acknowledged to value greatly the job.

While the PAC often investigates contentious issues, there is at least the opportunity for greater consensus and joint investigatory work guided by the Auditor General's reports. This presents opportunities for chairs to steer the Committee in such directions. Media coverage often focuses on the chair as the *de facto* head of the Committee, which still further establishes his identity as the Committee leader.

Mr. Williams is generally regarded as a successful Committee chair for many of the above reasons. Unlike at least some PAC members, he appears extremely interested in the Committee's work and issues of government accountability, both in Canada and internationally as a founder of the Global Organization of Parliamentarians Against Corruption (GOPAC). He dominates the Committee in three ways—as the Chair, as the longest serving member, and as a keen student of the subject.

But while he appears to have the personal respect of Committee members, several criticisms can be made. One member suggested that the Chair risked "thinking too much that [he's] part of the system" and almost separate from the Committee itself. Another pointed out that during much of the Sponsorship Inquiry and other controversial inquiries, the Chair seemed to follow a highly partisan agenda that was devised by his Conservative superiors. "I guess that's the way the Chair wants to run it…or maybe his Party."

Even if Mr. Williams is evenhanded in his Committee activities, he displays a much sharper partisan focus on accountability outside it. His periodic publication, *The Waste Report*, and press releases identifying him simultaneously as both PAC chair and "The Conservative Party's Waste Watchdog" attack government actions with much fiercer tenacity than in the PAC. Mr. Williams' double identity as both PAC chair and committed partisan raises the question of whether accountability and administrative matters can really be approached in non-partisan terms even by such an experienced and dedicated MP.

4.4
Staff

The final component of the Committee to mention is staff. The Committee has a full-time clerk and the services of two legislative library researchers. Members may also rely on their personal staff for PAC business, although none specifically reported doing so. Members appear generally satisfied with this modest complement; none argued for significantly more staff. This is because the Committee relies so much on the reports of the Auditor General and does little independent research of its own apart from hearing witness testimony.

While some members felt it would be useful to have one or two more staff to help digest OAG reports, prepare for witnesses, or follow-up on committee recommendations, most felt that more staff would only duplicate the work of the Auditor General. One member stressed the challenge was planning and making the best use of current staff: "the strength…of a committee is when you can use the resources around you." For him and others, this would be best allocated toward tracking committee impacts rather than major new investigations.

5 Relationship with the Auditor General

As noted, over 90 percent of the PAC's inquiries are concerned with Auditor General's reports, and it relies heavily on the Auditor's research and resources. Even the small number of other inquiries is sometimes linked to Auditor-inspired inquiries. For example, its May 2005 report on ministerial and deputy ministerial accountability was not directly related to an Auditor General Report, but was closely linked to its earlier Sponsorship Inquiry stemming from the 2003 Auditor General Report.

The relationship with the Auditor General can hardly be overstated. As one participant puts it, the OAG is "the eyes and ears of the Committee" and presents "the facts," while the Committee itself holds individuals to account for what the Auditor General has found. For at least one member, this has become too dependent a relationship: "the Auditor has gone to a status where we agree with everything she says…the Auditor is a little too powerful in the eyes of the Committee [and] we shouldn't become too raptured." But another member of the same Party said the relationship was "a very good balance." In general, the relationship does seem complementary with each role distinct. While the Auditor provides the Committee with fodder for discussion, the Committee provides a public forum for the further examination of government activities.

The PAC provides several distinct strengths to the Auditor General's inquiries. First, it can draw further attention and notice to issues raised by the Auditor General. While AG reports usually receive good or exceptional media coverage, this coverage may focus on minor sensational items, rather than more substantive and complex issues. Even when coverage is more thoughtful, journalists rarely have the time and space to dig deeply and sustain their inquiries. The PAC is able to revisit reports, often after the initial wave of attention, and attract further sustained attention to issues and problems.

Second, committees offer a venue for the Auditor General and public servants alike both to present fairly their perspectives and to hear the other side in a public forum. Auditors are given further opportunity to press their concerns, while public servants have an opportunity to answer and explain. The PAC ideally provides an evenhanded and reasonably formal setting for this, through the calling and individual questioning of witnesses in public meetings with recorded transcripts.

Third, the Committee provides additional public and visible pressure on governments to change or account for their actions. While its reports and recommendations may not have immediate influence, they remain important and easily accessible aspects of the public record.

But on the other hand, members may resent labouring in the Auditor's shadow. And, it is very difficult to find the line between the Auditor General's investigatory role and the PAC's accountability role. While these roles are often identified as "fact finding" versus "political accountability," it is not clear how we can distinguish the two. We have already discussed MPs' lack of interest in accountability matters. Is this caused or exacerbated by the rise of the Auditor General as a political and media figure and the undisputed chief "watchdog" for taxpayers? Though none admitted to doing so, PAC members may question how much they actually add to the Auditor General's inquiries and what "political accountability" actually means.

It is difficult to answer this question or investigate it in empirical terms. But the contribution of the PAC may be limited, given the Committee's rapid member turnover, thin staff resources, and MPs' lack of interest in accountability. Nuance, reflection and genuine interest in good governance and administration often seem lost in Committee struggles. While the Committee can and does produce thoughtful reports, they seem largely to amplify the existing reports of the Auditor General rather than break new ground. (A recent exception is its May 2005 Report on ministerial and deputy ministerial accountability, which we return to below.)

Key, however, is the PAC's ability to question publicly witnesses, unlike either the Auditor General or Question Period. In this way, the Committee does indeed hold government to account, publicly, for its actions. Whether the media pays much attention is perhaps not important; what is important is the public record and the potential for further attention. A PAC appearance is not taken lightly by public servants, and this provides powerful and transparent follow-up of the Auditor General's investigations.

6 Activities and Reports

We now move to the actual work of the PAC. As mentioned, the vast majority of PAC business concerns reports by the Auditor General. Topics are generally chosen by a steering committee of the Chair and other Party representatives. While members have fought over the choice of some contentious topics, such as the April 2005 investigation into public opinion research contracts that involved persons close to the Prime Minister, they generally report little disagreement over the selection of most inquiries.

Inquiries follow the standard parliamentary format of hearing testimony from witnesses, with committee members each asking questions for a fixed time period and alternating from government to opposition. This format has been criticized as encouraging individual and partisan inquires at the expense of genuine probing and discussion among members. Questioning can often become disjointed as members are cut off and another starts a different line of questioning. The fixed times may also encourage some members to fill up time unnecessarily, or even arrive and leave only to ask their questions and not listen to the rest of the testimony.

As noted earlier, the Committee hears from a limited range of witnesses. The Auditor General and sometimes her senior staff often begin discussing their findings. Senior public servants from the relevant departments are then questioned about the findings. Ministers may on occasion appear, but the PAC hears from relatively few people compared to other committees. Appearances from interest groups and the general public are virtually unheard of, as is travel off Parliament Hill. Committee reports are then drafted with the help of staff and discussed *in camera* before their release and tabling in the House.

Reports generally ask for a response from government, which is required within 120 days. These responses can vary in length and complexity, but generally address Committee concerns and what has been or will be done to address them. However, MPs noted that Committees generally find it difficult to follow up in turn on these responses. In fact, when asked "what one thing would most improve PAC effectiveness?", several said that better and more systematic follow-up after three or six months would be very useful; we have already seen that some feel additional staff would assist this.

6.1

Macro and Micro Inquiries

The Committee investigates a fairly large number of issues in short inquiries of one or two meetings. Between September 2004 and June 2005, the PAC conducted 19 separate inquiries of two or fewer meetings to hear testimony and discuss reports. The short 3rd session of the 37th Parliament (February-May 2004) was unusual in being almost entirely dedicated to the Sponsorship Inquiry, but the previous session (September 2002-November 2003) covered 26 topics in similar fashion to the 2004-05 session.

One committee member suggests that the PAC deals with "macro" and "micro" matters. The micro-matters comprise the majority of inquiries, with relatively little conflict and acrimony. (Another MP went so far as to say, "You have to remember a lot of this stuff is boring.") Indeed, these micro-matters receive little public attention. In contrast, more macro-matters, such as the Sponsorship Inquiry, attract much more attention but also much sharper partisan exchanges.

This micro and macro distinction is very useful in discussing committee activities and effectiveness. The former happen largely out of the public eye but may be highly effective at promoting good administration and accountability; the latter attract much more attention and political significance, but may have less real impact on government itself.

We can see this distinction by reviewing media coverage of the PAC. A search of the Canadian Newsstand database comprising nearly all major Canadian newspapers (with the notable exception of *The Globe and Mail*) found no coverage of most PAC business in the 2004-05 parliamentary session. The two items of business attracting major coverage were the *Sponsorship Inquiry Report*, issued April 7, 2005, and the spectacular testimony on April 19, 2005, over public opinion research contracts—a matter not directly related to the sponsorship scandal but covering similar ground.

Furthermore, coverage of the April 7 Report centred not on the Committee recommendations but on opposition attempts to amend the report to the House to indicate no confidence in the Government. While this received massive coverage as part of the brinkmanship surrounding the minority Liberal government, very little attention appears to have been paid to the Committee's actual findings. Similarly, the April 19-related coverage centred on explosive charges and exchanges between prominent Liberals over links between then Finance Minister Paul Martin and the Earnscliffe research firm, including accusations that one witness was intimidated against testifying. Little coverage was given to the Committee's own views, or the report on the matter issued in late June 2005. The Committee's second report related to the sponsorship scandal (Report 10—*Governance in the Public Service of Canada: Ministerial and Deputy-Ministerial Accountability*) appears to have received no newspaper coverage despite consuming eight committee meetings and making bold recommendations concerning ministerial responsibility.

It is hardly surprising that media coverage focuses on conflict and partisan exchange, rather than more consensual and administrative matters. However, we must not confuse media coverage with committee effectiveness. In fact, the PAC may be most effective when there is limited media attention, since there may be less pressure for members to play partisan roles.

Returning to the macro/micro distinction, lack of media coverage for micro-inquiries may help the Committee, since it is able to labour out of the public eye but still have a considerable impact on government administration. This can be difficult to measure because so much of the Committee's influence is through public scrutiny and deterrence. But it is the very need to explain things publicly before the Committee that may have the greatest influence on government administration and accountability. As one MP said, "There's nothing that puts the fear of God in a Deputy Minister like a letter asking them to appear before the Committee." Another continued the thought with, "If a senior public servant [who has just appeared before the Committee] thinks, 'I don't want to go there again', I think 'job done'." Unfortunately this also illustrates the larger problem of the insecurity of public servants appearing before committees in the absence of clear expectations, as we discuss below.

Tracking the influence of the Committee in these smaller matters can be difficult, either for the Committee or a research study such as this. As we saw, governments must produce comprehensive responses when asked, but committees have few instruments or resources to follow up, and thus, some members want more resources in this area. However, the Auditor General can and does conduct follow-up studies to check on government progress usually after two or three years, thus providing one such avenue. Overall, Committee members and other observers appear satisfied that the Committee, working in tandem with the Auditor General, is effective at exploring and improving government administration in many of these micro-areas. They may not make the papers, but they reverberate in government administrative circles.

While macro-level inquiries may feature partisan sparks and conflict-obsessed media coverage, they may also have impacts within government. But here it is more difficult to isolate the Committee's role. When the subject is featured in Question Period and endlessly discussed in the media, it is not as easy to know the independent effect of the PAC.

6.2

The 2004 Sponsorship Inquiry

To illustrate the difficulties of more macro-inquiries, we will now examine in some detail the 2004 PAC investigation into the sponsorship scandal following the sensational 2003 Report of the Auditor General.

This matter was the sole focus of the Committee in the first six months of 2004, consuming 47 meetings from February 12, 2004 (two days after the Auditor's report was released) and ending May 13, just days before the federal election was called. Meeting usually twice a week for two or three hours at a time, the Committee heard 44 witnesses including government Ministers, Deputy Ministers and other civil servants, heads of Crown Corporations and agencies, advertising executives, accounting and legal professionals, and the Auditor General and her staff.

This was not the first Committee Inquiry into the Sponsorship Program. In 2002, the Committee investigated aspects related to the Groupaction advertising agency. Again, this was preceded by an investigation and report by the Auditor General. However, as we saw above, much of the 2002 membership was no longer present in 2004—only six members, including the Chair, were members for both inquiries.

Unusually for the PAC, the Sponsorship Inquiry received extensive media coverage and was arguably the most prominent political story of Spring 2004—even before the later investigations of the judicial inquiry in the fall and winter of 2004-05. Thirty-eight of the sessions were televised (with most of the remainder being *in camera* sessions), and day-to-day media coverage was extensive and prominent. The committee delved extensively into the findings of the Auditor General and heard from many relevant witnesses, particularly public servants.

We will not review the details of the sponsorship scandal, but focus on the role and relevance of the PAC investigating it. On one level, this was a very effective committee activity. It provided parliamentary scrutiny and amplification of the Auditor General's findings for a nation and political system that was clearly interested. Numerous facts, details and allegations came forward, and issues were discussed and scrutinized at length, all on the public record. The Committee did struggle with legal dimensions, particularly for witnesses that feared implicating themselves for future criminal prosecution—a problem for its earlier 2002 inquiry as well—and some witnesses appeared with legal representation, unusual for a parliamentary committee. However, the hearings were full of detailed revelations and allegations for members to scrutinize and discuss in detail.

While most of the evidence eventually came forward in the subsequent judicial inquiry as well, often in greater detail, the PAC inquiry was timely and filled a clear public need for information and explanation immediately after the Auditor General's Report. As mentioned above, this type of public forum function is an often unappreciated aspect of the parliamentary committee system. Particularly useful was the Committee's publication of summaries of the evidence. A Committee researcher produced a very comprehensive and integrated report of what happened in the sponsorship affair, based on witnesses' testimony. Produced for the Committee's use, it was publicly released and widely available.

Yet on another level, this Inquiry was ineffective. What actually did the PAC contribute as a committee? While quick and timely as a public forum, it did not dig into the issues nearly as deeply as the later judicial inquiry, and did not yield greatly new findings beyond the Auditor General's Report. It was also wracked by partisanship. Inter-party conflict was common, with recorded votes taken on many issues and a general sense of acrimony throughout the hearings.

The Committee hearings featured much thoughtful and detailed questioning of witnesses. But they also saw acrimonious and accusatory exchanges, although normally between members rather than between members and witnesses. It is worth noting that, unlike judicial inquiries as well as major American congressional committees, Canadian committees do not engage lawyers or other staff to conduct questioning, but leave all inquiries up to members themselves in the standard rotation format. Consequently, questioning is often uneven and members may interrupt each other to challenge the line and wording of questions.

The Committee's ability to work together for questions and other matters was also undermined by daily changes in membership. Although this was a critical and high-profile activity, the Committee still suffered from a revolving set of members. No less than 76 different MPs served on the Committee for this Inquiry at one time or another. However, 53 of these attended less than 5 meetings, acting as substitutes for regular members, while most Committee members, attended 80 percent or more of the 47 meetings.

Many of these substitutions were presumably due to unavoidable absences and other contingencies. But consistency appears to have been unimportant. Rather than calling on a small pool of associate MPs to serve as substitutes when needed, thus providing some continuity for such an important inquiry, parties seem to have sent whoever was available. (As noted before, in August 2005 no less than 106 MPs are considered "associate members" of the PAC, and a similar number were available in 2004.)

However, some substitutions were more carefully planned. The Inquiry included a significant number of MPs who attended many of the 47 meetings but yet were never formal Committee members. These include prominent Conservative MPs Jason Kenney, Victor Toews, Diane Ablonczy and Peter MacKay, who attended 41, 36, 31 and 26 meetings respectively, all nominally as "substitutes" for regular members. Liberals Dennis Mills and Robert Thibault also attended many meetings—39 and 28—originally as non-members, but were made regular members of the Committee partway through the hearings.

In other words, parties seem to have assigned "pinch-hitters" to the Committee to serve without prior background in the PAC or future commitment to it. This is particularly evident for the Conservatives, since these same MPs were leading attacks on the Government in Question Period and the media throughout the period. Their goals in the PAC were presumably not non-partisan investigations into government administration, but maximum use of the PAC forum to attack and embarrass the Government, as they were doing in other venues.

Some partisanship is unavoidable in committees with members from different political parties. But the fluidity of membership here, and especially the strategy of reassigning key members, illustrates how much the PAC is affected by the larger partisan context. The culture of the Canadian Parliament does not allow insulation of the PAC from party political struggles, at least for such major inquiries of great public and media interest.

The Inquiry produced a "working paper" draft report in May 2004, just before the general election, but no final report until the spring of 2005, in the next Parliament when nearly the entire Committee had changed. Despite the partisan atmosphere, both these reports were supported by all members of the Committee. This is certainly notable, although the reports focused more on agreed facts and future recommendations rather than clarifying who exactly in the Committee's mind was responsible and accountable for what had happened.

As noted, the substance of the final 106 page report received little public notice even though it reviewed the sponsorship affair in detail and made numerous recommendations for accounting and administration within government. It was closely followed by a second report, "Governance in the Public Service of Canada." This report followed and expanded on ministerial accountability and the roles of Ministers and Deputy Ministers, arguing for adoption of the British "accounting officer" concept—a point we will return to below.

Was the 2004 Sponsorship Inquiry ultimately an "effective" committee inquiry? As with most parliamentary committees, this depends on the criteria used. The Committee served well as a forum for the timely examination of issues, even though it was largely superseded by the more comprehensive and better-resourced judicial hearings. But the Committee resolved little by itself, serving more as the place for amplifying the Auditor's findings and allowing or compelling witnesses to explain things in more detail. Its consensus reports were detailed and constructive, but largely reported what had emerged in the hearings. They did not reach far in assigning responsibility, and it is difficult to measure the actual impact of their recommendations, at least at present.

The PAC's impact is best understood in the overall context of the Canadian accountability system. As noted, its main strength was to serve as a timely forum following the release of the Auditor General's Report. However, in many ways it simply extended the partisan fights and struggles of Question Period. The PAC certainly did not provide a more neutral and insulated place of inquiry and consideration, and it is difficult to see how it could given the explosive issues and the current parliamentary culture.

This in turn speaks more broadly to the overall question of PAC effectiveness, particularly given its close relationship with the Auditor General of Canada. What does the PAC supply that the Auditor General does not? It is the Auditor General and her reports that receive far more attentive and substantial coverage than those of the PAC. This leaves open the crucial question of whether more can reasonably be expected of the PAC, given its minimal resources, unstable membership, and the status of public servants testifying before it.

7 Accountability and Public Service Witnesses

Earlier we referred to the difficult issue of public servants and parliamentary committees. This is an issue of particular relevance for the PAC, given its focus on public administration, and certainly for the Sponsorship Inquiry as well as other matters. Aucoin and Jarvis assert that: "…deputy ministers and other public servants are now held accountable by MPs in parliamentary committees…[yet] there has been no formal acknowledgment…of a change in the understanding of the constitutional convention of ministerial responsibility or of the formal status of deputy ministers."

Public servants do have some brief guiding documents for these matters from the Privy Council Office. The 2003 *Guidance for Deputy Ministers* notes that Deputy Ministers should on occasion appear before parliamentary committees "to give an account of their stewardship of the department. They should ensure that their officials do likewise." However, "[p]ublic servants do not have a public voice, or identity, distinct from that of their Minister, nor do they share in their Minister's political accountability. Non-partisan public servants have no role in defending the policy decisions made by the Government or in debating matters of political controversy." (p II.4) But what constitutes "policy decisions" or "matters of political controversy" as opposed to administration and "stewardship of the department"? The precise line remains unclear.

Similarly, the 1990 "Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees" states that:

> Officials may give explanations in response to questions having to do with complex policy matters, but they do not defend policy or engage in debate as to policy alternatives. In other matters, principally those having to do with the administration of the department and its programs, officials answer directly on behalf of their Ministers. Again the answers should be limited to explanations.

> Officials must understand and respect their obligation as public servants not to disclose classified information or other confidences of the Government to those not authorized to receive them. For their part, committees generally recognize that the provision of information to committees beyond that normally accessible to the public must be a matter of ministerial decision and ministerial responsibility.

Again, what precisely is the division between policy and administration? While the answer may be self-evident much of the time, it is not always; the Sponsorship Program or the spiraling costs of the Canadian Firearms Agency are good examples of grey areas. It is these matters that most attract political attention and the interest of parliamentarians. Particularly concerning is the second document's note that "committees generally recognize" that public servants are not always free to speak. This is not encouraging, suggesting that committees do not always distinguish between the roles of Ministers and public servants in their inquiries.

The lack of established ground rules surrounds every public service witness—Deputy Minister and otherwise. How much can they say, and what will happen if they say either too much or too little? They risk legal liability and criticism from parliamentarians, from Ministers, from their fellow public servants, and possibly even the media and general public.

Uncertainty is exacerbated by the partisan atmosphere of committees and the self-interest of both government and opposition. Government members may attempt to defend or shield public servants, either out of principle or to stymie and deflect inquiries entirely. Alternately, they may focus their attention on public servants to deflect criticism of government ministers. The Opposition in turn may protect or attack public servants as well. It is difficult to separate wrangling over public servants' rights and responsibilities from the more general struggles for advantage between political parties.

Committees may also be frustrated by inability to either establish clear responsibility or ascertain whether appropriate discipline has been imposed on public servants. Aucoin and Jarvis note that "…the Canadian system of public service accountability that operates within the Government and the public service does not have sufficiently effective methods to assure parliamentarians, the media or the public that public servants are held to account for their actions, or are disciplined or sanctioned as necessary."

Many observers have argued for greater clarity in public service accountability, most notably by adopting some variation of the British "accounting officer" — a concept explored more fully by other papers in this research study. Giving more explicit statutory responsibility to Deputy Ministers for the administrative and financial affairs of their departments may allow committees and others the ability to assign clear responsibility for problems to either Ministers or Deputy Ministers, as appropriate. Deputy Ministers would be obligated to account for their actions primarily to Parliament, rather than explaining them while still primarily responsible to their Ministers and subject to their discipline.

The PAC itself has endorsed this recommendation. In its May 2005 report "Governance in the Public Service of Canada," it wrote:

> The Standing Committee on Public Accounts was unable to establish, with certainty, exactly who bore ultimate responsibility for the mismanagement of the [sponsorship] program — and thus who should have been held to account.
>
> Adoption of the accounting officer model will avoid any such confusion in the future and will significantly reduce the likelihood that the kinds of behaviour associated with the Sponsorship Program will happen again. Canadians need this assurance and Parliament needs the tools that can provide it.

The Committee's frustration is evident, and adopting some version of the accounting officer approach may indeed help the PAC clarify its inquiries and increase its impact. It would establish clearer ground rules for public service testimony where few now exist, and perhaps reduce the current struggles over what constitutes appropriate questions and answers. This would be so particularly if accounting officers were directly responsible to the PAC, as in the U.K. Such a practice could expand the role of the PAC while also giving it more focus and precision in its inquiries.

But with its fluid and often uninterested membership, would the PAC make full use of the accounting officer framework? It remains unknown, and we must recall the caveat that "committees generally recognize." The Committee works well as a public forum for the scrutiny of issues, and produces thoughtful and interesting reports. But its present style remains uneven and its membership unstable.

Would PAC members follow the division of responsibilities inherent in the accounting officer concept, or would the existing parliamentary culture push members to engage in the same struggles and elaborate blame games anyway? It could be that Opposition members will continue to try to hold Ministers to account for everything, while government members struggle to explain the role of accounting officers as they defend Ministers.

To be most effective, the accounting officer concept must go hand in hand with more strengthening of the PAC, particularly reduced partisan pressure and a more stable membership. Accounting officers may provide the right focus and spur the Committee to act consensually and with an agreed distinction between "policy" and "administration." Or, they may be generally ignored by committee members, especially in the absence of a strong and experienced committee chair and core of members.

In short, while promising and worth careful study, the creation of accounting officers is not an instant solution for the PAC's shortcomings and the ambiguity surrounding public service witnesses. It would add much-needed clarity to the questioning of Deputy Ministers and possibly other public servants. However, the Committee must ensure that it follows the practice and respects the roles of public servants and their Ministers even when partisan pressures encourage other tactics.

8 Conclusions and Recommendations

Any conclusions and recommendations about the PAC must recognize that it is very much part of the larger parliamentary and political system. The PAC must grapple with partisanship as a constant presence, although not necessarily an overwhelming one. It is one of 20 standing committees in the House of Commons and, while unique in some ways, is subject to the same pressures, tensions and ambiguity that surround the Committee system and indeed Parliament itself. Its members may not seek or value the assignment and are rotated frequently. Like other committees, it operates with minimal resources of its own, follows a sometimes disjointed style of questioning, and has few concrete rules or understandings of the role of the public servants that comprise many of its witnesses.

However, as a parliamentary body, the PAC is highly flexible and enjoys considerable potential media and public attention. It can meet quickly, call any witnesses it wants and delve into any aspect of Auditor General reports or follow its own interests. Like other parliamentary committees, it serves as a central and visible forum for the discussion of public issues. Unlike many other committees, its reports are often by consensus and thoughtful and constructive.

The PAC appears to have some impact on government administration. But it is presently by amplifying and extending the work of the Auditor General, rather than discovering new facts and information. The PAC's particular contribution is the public scrutiny of witnesses, holding them to account in a formal forum, but not necessarily finding and clearly identifying who in the end is accountable for problems. In this way, the Committee follows up on the Auditor General's findings, giving affected parties a chance to explain themselves, accounting for their actions and how they will respond. It is not necessarily a fact-finder itself. Although the Committee may not see its recommendations become government practice, it has other more hidden effects of deterrence and preparation. Committee hearings and recommendations may not have visible or earth-shaking impacts, but the need to prepare for and withstand scrutiny is not taken lightly by public servants, and this can be a valuable contribution to good government itself.

In some ways it is surprising how well the Committee performs, considering its revolving membership, the apparent lack of interest of some MPs, and the constant partisan tension and occasional breakdowns. These factors are rooted in the larger parliamentary context and are not easily changed. In particular, it is unrealistic to expect Committee members, as members of political parties, to be able to exclude partisanship from their inquiries completely.

It is interesting that the Committee does not appear to seek significantly more staff or more projects independent of the Auditor General — items that could be modified with little difficulty. This suggests the PAC's challenges are more intertwined with the larger context and not easily resolved. The revolving membership and ambiguity surrounding public service witnesses are more important, and also much more difficult to change.

These conclusions lead us to four recommendations for improving and extending the PAC's role in the Canadian accountability system.

8.1

Recommendations

- *The Public Accounts Committee must have a stable and experienced membership*

While revolving membership is a problem for all Commons committees, it may affect the PAC the most because of its wide range of interests and their sensitivity and complexity. Political parties must commit themselves to maintaining and supporting PAC members for much longer periods of time. This will allow the Committee to gain expertise and greater integration amongst itself, which in turn may reduce partisan tensions and increase the depth and strength of committee reports. While desirable for all parliamentary committees, the PAC may benefit most from this given the unique nature and complexity of its responsibilities.

- *Members of Parliament must take a greater interest in accountability issues*

This is obviously up to MPs themselves, but it is central to the improved functioning of the PAC, particularly if the accounting officer practice is implemented in Canada. Members must demonstrate a common commitment across party lines to good governance, and the understanding of structures and problems rather than a relentless search for guilty parties and maximum political embarrassment. While MPs may argue that the media and public are uninterested in such work, it is their duty as parliamentarians to hold government to account and scrutinize it with care and nuance.

- *The Public Accounts Committee should have more permanent staff*

As noted, PAC members generally do not demand more resources. But additional staff would allow the Committee to conduct more of its own independent research and preparation. It may even be that staff could be delegated to lead the questioning of witnesses. While this may seem an inapplicable American practice, it would increase the continuity and questioning of the Committee (at the possible expense of MP visibility), giving a greater sense of non-partisanship and professionalism to inquiries. Perhaps most importantly, significantly new resources and staff would set Public Accounts further apart from other committees, possibly increasing its prestige and desirability for MPs.

- *A variation of the British accounting officer framework should be adapted for Canada*

The establishment of greater statutory responsibility by Deputy Ministers to Parliament for matters of administration would add potential clarity and focus for the PAC. Public servants could be held more to account to Parliament without confusing this with responsibility to Ministers. But it is not a panacea and could potentially be mishandled by the Committee, especially if it lacks more stable and interested members. Much depends on being able to distinguish between matters of policy and of administration, which is difficult in a partisan forum.

These recommendations, apart from modest staff increases, are not simple to implement. They speak to the larger context in which the PAC must operate—one of partisanship, distraction and ambiguity. However, their adoption will contribute considerably toward strengthening Parliament's ability and inclination to hold government to account The PAC serves modestly well at present, but could be made a much stronger and more valuable instrument for accountability in Canada.

CLARIFYING THE DOCTRINE OF MINISTERIAL RESPONSIBILITY AS IT APPLIES TO THE GOVERNMENT AND PARLIAMENT OF CANADA

David E. Smith

1 Doctrine

1.1

Introduction: The Constitutional Doctrine of Ministerial Responsibility

In academic studies, comparisons between Canada and other countries based on the Westminster model, that is, the United Kingdom, Australia and New Zealand, are so familiar as not to elicit comment. Yet they should, for together these countries stand apart in sharing — virtually replicating — a constitutional, legal and linguistic inheritance. Of course, there are differences among the quartet: Canada and Australia are federations, the United Kingdom and New Zealand unitary systems.

But it is the similarities that attract, none more so than the fact each is a monarchy that shares a common sovereign.

The relevance of a common constitutional legacy and similar governmental institutions is this: the frame for political discussion is much broader than is found in countries with singular constitutions, such as the United States and France. At the same time, the scope for variation in relations that obtain between Minister and Crown, or minister and legislature, or minister and civil service—the component elements of constitutional monarchy—is extensive. Constitutional monarchy operates largely by means of conventions, what John Stuart Mill described as the unwritten maxims of the constitution. For that reason, advice, consultation and understandings play a critical part in arriving at decisions. The same indeterminate atmosphere pervades the conduct of the Commons on matters of great importance. Consider, for instance, the "Speaker's Ruling on the Application of the Progressive Conservative Democratic Representative Coalition for Recognition in the House of Commons," in which Speaker Milligan commented: "In matters relating to the status or designation of individuals or groups in the House, the House makes its own decisions without necessarily limiting itself to standards and definitions used outside the House of Commons."[1]

In a Westminster system, constitutional principles are largely unwritten and generally non-justiciable. *The Constitution Act*, 1867, constitutes the federal union with fewer than half its sections devoted to the structure and operation of the executive and legislature. Responsible government does not appear, its provenance instead a simple instruction in 1847 from the Colonial Secretary (Earl Grey) to Nova Scotia's governor (Sir John Harvey), to the effect that in future the governor select as his advisers those who controlled the local assembly. The same communication contained a paragraph of direct relevance to the topic of ministerial responsibility. It spoke about the future place of the civil service and, more particularly, the relationship that should obtain between Minister and civil service in the era of responsible government about to dawn. Since the relationship between Minister and Deputy is a central concern of this study, Grey's instruction to Harvey should be quoted in full, at the same time noting (once again) the conventional form this cardinal principle of the reformed constitution assumed:

> Those public servants, who held their offices permanently, must upon that very ground be regarded as subordinate, and ought not to be members of either house of the Legislature, by which they would necessarily be more or less mixed up in party struggles; and, on the other hand, those who are to have the general direction of affairs exercise that function by virtue of their responsibility to the Legislature, which implies their being removable from office, and also that they should be members either of the Assembly or of the Legislative Council.[3]

It is no coincidence that debate today over ministerial responsibility is taking place at a time when there is strong criticism of prime ministerial power and of the rigid party discipline that makes it possible. Much is said about the failure of the House and its members to speak for or be responsive to public and constituency opinion. The implications for cabinet, individual ministers, members of Parliament on both sides of the House and for the public are profound. Thomas Axworthy goes so far as to say that "lack of attention to accountability as an overriding goal of our political system has resulted in many citizens choosing to opt out of the political process."[4]

Parliament is a self-contained political system. Only in the 1860s did parliamentarians in Great Britain and in Canada go out to the people, and only thereafter were governments usually made and unmade at the hands of the electorate outside the House. Even with this change, and even with the arrival of the *Canadian Charter of Rights and Freedoms*, politics continue to be played out almost totally within the parliamentary dimension. There are three reasons for making this assertion. First, since before Confederation and up to the present, Canadian politics are partisan, indeed extensively so. Partisanship pervades the House and infects every aspect of its activities. Second, the executive is drawn from and is accountable to the legislature. Public and media attention focus on the House, to the exclusion of the Senate and even the courts much of the time. A final, but often neglected, reason for the Commons' drawing power is that under monarchical, parliamentary government, civil servants serve the Crown but are subject to direction of the political executive. In Canada, the civil service is statutorily-based; in Britain, where the civil service is still considered "an extension of the royal household," the foundation is convention.[4] In this hermetic world, there is no provision, either in theory or in practice, for inclusion of the people in the formation or conduct of public policy. Herein lies the explanation for continuing concern about the health of the doctrine of ministerial responsibility.

1.2

Ministerial Responsibility

Ministerial responsibility is the hinge of the Constitution. Individually and collectively, ministers are the conduit between the people's representatives and the Crown in whose name government is conducted: "For every action of a servant of the Crown a minister is answerable to Parliament."[5] Parliament is both a representative institution and the seat of government. By convention all ministers must have seats in Parliament, and, by custom today in Canada, all ministers but the Government Leader in the Senate are members of the Commons. Indeed, one of the complications associated with transforming the Senate into an elected body is the implication that reform would have for the operation of ministerial responsibility. Would ministers sit in the upper as well as the lower chamber? Would the government and its ministers be responsible to both houses? In Australia, a quarter or more of the ministers sit in the Senate, although that body is not considered a confidence chamber. The source of the difference between Australia and Canada in this matter is beyond the scope of this study, except in one respect that requires emphasis. The Canadian Senate is not a federal chamber in the sense its counterparts are at Canberra and Washington. That difference is the source of much criticism in Canada, where the federal dimension is reflected at the centre solely through the composition of the cabinet. Two consequences relevant to the present discussion flow from this feature of the Canadian Constitution. First, ministers are the primary bearers of administrative responsibilities for their province, which in Australia would be shared with members of the Senate. Second, the business of government in Canada, a country of immense size and varied and rapidly changing economic, social and demographic characteristics, is concentrated in the hands of ministers.

Canada's is a double federation — territorial and linguistic. For this reason, there is a need for caution in drawing comparisons between it and other Commonwealth countries, particularly Australia, that share the heritage of monarchical, cabinet-parliamentary government. Caution is all the more needed because in a world of invisible rules, which is another way of describing unwritten conventions, comparisons are deceptively simple. On its surface, ministerial responsibility is easy to comprehend: responsibility is a civic virtue, with citizens taught from childhood to be responsible for their actions. A coda to that lesson is the consequences (often in the form of penalties) that ensue for failure to act in this manner. Ministerial responsibility is both comprehensible and consequential, except that the sequence might more usefully be reversed. Consideration about ministerial responsibility tends to occur after the fact, that is, in a context where it is perceived to have failed. Thus, scandal and controversy often precede and then engulf discussion of the subject. The provenance of the discussion dictates a predictable outcome, an imperative for action: "This must not happen again: What can be done to see that it does not happen again?" In this atmosphere there is no assurance that the long view of the doctrine, policy or administration will necessarily prevail, an assessment captured in the title of a much-quoted Canadian article on ministerial responsibility: "Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem."[6]

1.3

Individual and Collective Ministerial Responsibility

The comments that follow privilege individual over collective responsibility. Only by doing so can the relationship between Ministers and Deputy Ministers be explored. Still, there is a linkage between the two variants that needs to be made explicit. In the words of British political scientist David Butler: "There are two key elements to collective ministerial responsibility. The first is that all ministers ... once they know of a government policy, must defend it—or keep silent about it; otherwise they must resign... The second element ... is that if a government is defeated on a vote of confidence, it must recommend a dissolution, or it must resign."[7] Hang together or hang separately. The group protects the individual, but only if the individual acquiesces or is forced to agree. Here is the rationale and the requirement for discipline; and here the motive power for parliamentary politics. Collective responsibility regulates the lives of ministers, individual responsibility the lives of officials, none more so than Deputy Ministers.

In the question of collective ministerial responsibility the choice is simple: resign or seek dissolution when defeated on a matter of confidence. As Canadians saw preceding the formal vote of want of confidence in the Martin Government in May 2005, there may be disagreement over what constitutes a defeat of a government in the legislature, but once that is resolved, the choice is clear. Individual ministerial responsibility is a very different matter, beginning with the question of resignation.

Governments resign when they are defeated; ministers, who in any case are not in a position to be "defeated," do not resign. That at least is the conclusion to be drawn from statistics assembled by scholars in Canada, Australia and Great Britain.[8] Sharon Sutherland, in her study of 151 ministerial resignations in Canada between 1867 and 1990 found that only two ministers had resigned for "maladministration in their portfolio." Eleven exited due to breaches of ethical standards, 28 due to lack of solidarity with their colleagues (for example, Lucien Bouchard's defection from the Mulroney cabinet in 1990 over "the government's method of dealing with constitutional change") and 62 due to receiving a government appointment. David Butler's statistics on ministerial resignations between 1901 and 1996 in Australia and Britain found 28 percent of resignations in the first (but only 15 percent in the second) due to "personal fault in a public capacity." "Accepting blame for public servants" explained five percent of resignations in Great Britain but none in Australia.

Resignation is the measure and the meaning of ministerial responsibility—to the media, who need only to fix their focus on an individual, and to the public, who take their understanding of ministerial responsibility largely from the media. James Mallory, who wrote more on cabinet government in Canada than anyone in the last half of the 20th Century, assigned to resignation a "homiletic value."[9] The more usual language is to say it is symbolic. Whether one attributes this response to a "blame culture," a desire for metaphorical "public hangings", or a "shooting gallery mentality" is of secondary importance to the predictable recurrence of the response and the equally predictable failure in all but a very small number of instances for that wish to be realized.[10] Noteworthy is Ken Kernaghan's conclusion: emphasizing the need to resign even though it seldom happens "explains in large part the view that the doctrine of individual ministerial responsibility is dead or at least severely weakened."[11] Kernaghan argues that the resignation quest deflects attention from where it should be directed—on the securing of information. He calls it "the answerability component"—Parliament's need to know what went wrong and how to avoid its happening again.[12]

1.4

The Meaning of Responsibility

British academic Diana Woodhouse presses this corrective even further. Using H.L. Hart's terminology, she argues for distinguishing between role and causal responsibility, maintaining that "this would make a more appropriate distinction between the accountability of ministers and officials and... would move the emphasis away from personal culpability toward the requirements of explanation and amendatory action."The concern here is to escape the binary, and in her opinion, unhelpful division between accountability and responsibility, where the minister explains what went wrong but takes no responsibility because he or she is not directly involved in what went wrong. In this interpretation, culpability is the key to responsibility. Woodhouse rejects this approach because it presumes hermetic worlds of operations and policy—an "artificial division" she says—and because the role of the minister, in her view, should be that of overseer of both policy and operation.[13]

The fault or tort criterion is out of favour with some critics in Canada. In *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics*,[14] the author notes the suggestion made to the Task Force that "Canadian ministers traditionally involve themselves more often in certain details of administrative decision-making than do ministers in most other parliamentary countries. If this tradition continues, it is natural to expect ministers to accept corresponding personal consequences for these decisions." Perceptively, the Task Force recognizes that changes in roles and responsibilities do not occur in a vacuum, and that Canadian political culture is an influential consideration. In particular, the high turnover of MPs "reduces the capacity to build substantive expertise on public administration in the House." The competence of ministers "may limit the room to manoeuvre." Conversely, if the pendulum swung the other way and public servants were given "more direct authority and … more direct accountability to Parliament," then this would undercut the authority and responsibility of ministers.

While the public service and public administration are its primary concerns, the Task Force is unusually sensitive to the political dimension of government. That is to say, it acknowledges what reformers sometimes neglect—the federal and partisan worlds ministers inhabit. To reiterate, ministerial responsibility monopolized protects authority, while ministerial responsibility shared depreciates it.

1.5
De-Politicizing Ministerial Responsibility

A quarter of a century ago, the Report of the Royal Commission on Financial Management and Accountability (The Lambert Commission Report) first broached these kinds of questions. That is, who is (or is not) in charge; who should be in charge; and, in particular, how to reassert control? In his Report for 1975, the Auditor General said that "Parliament—and indeed the Government—ha[d] lost or [was] close to losing effective control of the public purse." Lambert's importance to the discussion of ministerial responsibility lay in his recommendation to neuter the doctrine as a political concept. Accountability, at least as far as financial matters in departments, would lie in the hands of officials, most specifically, the Deputy Minister. To oversimplify: fixing financial control would make auditing easier. Ultimately, the recommendation was never implemented, but the debate that followed the Report is relevant for the present discussion. In particular, the argument against de-politicizing policy decisions was just that: politics were being extracted from government, which by its very essence was political in operation, "an endless series of rolling compromises," according to Douglas Hartle, a strong critic of the Report.[15]

Another interpretation of the Report's perspective is to say it sought to personalize accountability in a manner Sharon Sutherland described as "a kind of individual moral accountability of people as natural persons."[16] Where the traditional union represented by ministerial responsibility was between ministers and House, and ultimately minister (and government) and the electorate, through mechanisms such as Question Period, in the new version it was between a singular civil servant and, necessarily, a parliamentary committee. To the critics, there were several flaws with the reconstituted doctrine of responsibility, beginning with the fact that it was not ministerial, either individually or collectively. In their eyes, the loss was not compensated by making a civil servant accountable to a parliamentary committee whose competence and interest in the matter of exacting accountability, as opposed to winning public credit with the electorate, were suspect.

Moving responsibility from Ministers into the hands of civil servants (most probably those of Deputy Ministers) and out of Parliament into one of its committees constituted a significant reversal of constitutional development. There is an unresolvable tension between the function of parliamentary committees and the conduct of responsible government: if, as James Mallory once said, "responsible government undermines parliamentary independence," the reverse is also true.[17] Even in the "good" cause of checking the executive, as its proponents advance, the result of the reform is the same: weaker and less accountable government and maybe weaker Ministers and Deputy Ministers, since the symbiotic relationship between the two could not help but be affected by the increased power of the deputy with the potential loss of confidence of the minister. The hallmarks of civil servants in the parliamentary mode are anonymity and neutrality. They advise without fear or favour ministers who decide the policy to adopt from choices presented. Much could be said as qualification to this general statement, but the values themselves are unequivocal. Equally important, they are realizable only in a climate of confidentiality.

Monarchical-cabinet government, based largely on unwritten conventions interpreted individually and personally, depends upon secrecy in order to promote candor among participants. The confidence that comes from the understanding that discussions and advice between Ministers and departmental officials are privileged cannot help but be compromised when those officials may be answerable to parliamentary committees. The relationship between Minister and Deputy is of a piece with the relationship between first minister and the Crown's representative, the Governor General—private, personal and political (but not partisan). In this privileged milieu, accountability assumes a distinctive limited meaning—for example, to one principal and for one program. Hierarchy discourages dissemination of information and diffusion of authority.

Monarchical-parliamentary government is an important explanation for the disposition to resist diffusion in Canadian politics. Still, it is not the only explanation. Daniel Elazar has said of American federalism that it is neither centralized nor decentralized but rather non-centralized.[18] The same cannot be said, despite the perennial concern expressed at the perceived "Balkanization" and asymmetrical programs, of Canada's federation. Donald Savoie has argued that to the extent power is concentrated, it is lodged in central agencies answerable to the Prime Minister. From the perspective of the central agencies, the maintenance of the federation, seen in terms of Quebec-Canada relations, Aboriginal and First Nations matters, the implementation and protection of civil and minority rights in the era of the Charter, or the enduring quest for regional equality, concentrates attention on matters of control, especially as a result of the requirement for ministerial accountability for finances under a system of responsible government. At one time, the hierarchy of monarchical-parliamentary control was replicated in departments such as Agriculture with Ministers like James G. Gardiner, in the same portfolio for 22 years and in Bruce Hutchinson's phrase, "a kind of semi-sovereign power" in his own right.[19] Gardiner's agricultural priorities became those of the Government of Canada, indeed of more than one government because of his and his Deputy Minister's long tenure. Today, because of changes in Canadian federalism, national political parties and the advent of new public management policies, continuity and control emanate from the central agencies. The quintessential party politician, Gardiner would have had no qualms about a parliamentary committee questioning his Deputy, although at the same time, no one would have doubted that Deputy spoke for Gardiner. Today, with more frequent turnover of Ministers and Deputies, the unquestioned identification between principal and second-in-command has disappeared.

1.6

The Canadian Practice of Ministerial Responsibility

Yet in the organizational scheme of government, Canadian Ministers who hold a portfolio are responsible and accountable to Parliament. A previous Minister is not responsible and cannot be held accountable or answerable to Parliament or its committees for what went on during his or her tenure. Current ministers are answerable for actions taken by predecessors. Ministers are answerable as well for information on the use of powers by non-departmental agencies assigned to the agencies by statute. For the exercise of these powers the heads of the agencies are responsible not to Ministers but through Ministers to Parliament. Deputy Ministers are answerable, not accountable, before parliamentary committees. Deputy Ministers are accountable to their Ministers, to the Prime Minister and to the Treasury Board but not to Parliament and its committees.

The foregoing is drawn from a submission by C.E.S. Franks to the Standing Committee on Public Accounts in 2004 and quoted, approvingly, in the Committee's Report, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability* (May 2005). The nub of his remarks is that "responsibility and accountability belong to the office and its current holder." In the period when Jimmy Gardiner held the Agriculture portfolio for more than two decades, this perspective offered few problems as far as accountability to Parliament.

The old union of Minister and Deputy has disappeared for reasons that are familiar. The range and complexity of government programs has multiplied and, as a result, there is the need nowadays to involve more than one department in implementing a program or policy; shared-cost financing has altered the administration of federal and provincial programs; national political parties are weaker and regionally-based parties stronger than at any time in the past; and public attitudes toward government have changed, as reflected in demands for greater responsiveness, in company, paradoxically, with new monetary theories that envision less interventionist government than was accepted after the Second World War, especially in the Anglo-American world. The list is long and the influences itemized contradictory. For example, on one hand, because of scientific research and globalization, policy is complex and requires specialist knowledge, while, on the other, the demand everywhere is for openness, accountability and responsiveness. The scandals involving Human Resources Development Canada (HDRC) and the Sponsorship Program, as well as the continuing critique in a succession of reports by the Auditor General of Canada on the theme of lack of government accountability, suggest urgency in clarifying ministerial responsibility as a practicable doctrine of government.

1.7

The Accounting Officer Alternative

It seems generally agreed that because of the scope of government programs Ministers cannot personally be accountable for everything done in their name. Is there a substitute point of accountability? Significantly—if only because of the absence of rival alternatives—is the British practice of appointing the permanent secretary of departments (the British counterpart to a Canadian Deputy Minister) as Accounting Officer (AO). A full discussion of the role of the AO is beyond the scope of this paper. The essential feature to relate is that this official has "a personal responsibility for the propriety and regularity of the public finances for which he or she is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the available resources."[20] C.E.S. Franks has argued that the AO provides a focus for accountability in a system where despite frequent reference to the principle of ministerial responsibility, no one can be identified as responsible. Mr. Justice Gomery, chair of the Sponsorship Inquiry, was reported as echoing the frustration of other commentators: "No one seems to be responsible;" and when incompetence was found, observing that "nothing is or can be done about it." "I don't think that there is any disposition in the *Financial Administration Act* that authorizes you to fire a grossly incompetent employee… I looked and I looked and the more I looked, the less I found."[21]

Except where a Minister overrules his or her AO, the Officer personally accounts for his or her but not the Minister's actions before the British Public Accounts Committee. The AO concept had its origins in Gladstone's time as Chancellor of the Exchequer. It made its way into the government of Ireland (but not to the old Dominions), where it remains a key element of administration. In 2002, the *Report of theWorking Group on the Accountability of Secretaries General and Accounting Officers*, an 89 page report took note of the officers' history in Ireland and paid special attention to the "unusual" system where the Secretary General (equivalent to a Canadian Deputy Minister) is "accountable" to the Minister "for managing the Department," while he or she is "also personally answerable to the PAC for regularity, propriety and value for money" (para. 26). As the Report notes, the Accounting Officer is a structural heretic since the Officer's duties fall "outside the normal system of civil service delegation where, in general, civil servants act in the name of the Minister"(para. 27).[22]

This is the point of dispute in Canada. Advocates of the concept see it filling a lacuna in accountability, which by inference, if adopted, will strengthen ministerial accountability. Critics say these claims are exaggerated and misleading. Deputy Ministers, they argue, are required to show Parliament the same respect and adherence to financial procedure in Canada as Accounting Officers do in Britain; and in neither country can Public Accounts Committees reward or sanction, or for that matter direct, a civil servant. Formal signing of accounts by the AO does not alter the reality that it is the Minister who in the House takes responsibility, however that term is interpreted. David Butler has written that "in Australia [he might equally well have said Canada], as in Britain, I have yet to meet a Minister who doubts the extent to which his life is regulated by collective responsibility. I have yet to meet a senior official who denies the centrality of individual ministerial responsibility in everyday bureaucratic life."[23]

Those familiar and sympathetic with the work of Accounting Officers continue to seek greater clarity in their functions. Consider, for instance, the recommendation of the Irish Working Group on Accountability:

> In the interest of more clearly defining the responsibility of the Accounting Officer and of the Chief Executive Officer, or equivalent, in respect of bodies under the aegis of the Department [in Canada,

> Crown Corporations, or executive agencies, for example], which are in receipt of Exchequer funds, their respective roles and the framework and processes of accountability should be set down in writing.[24]

As with prerogative powers, convention, privilege, ethics, conduct, and now ministerial responsibility, the pressure for change is in one direction only—toward codification of a "new administrative law" and justifiable action. In consequence, Officers of Parliament go to court, while members of Parliament and the public go to Officers of Parliament; direct administrative accountability supersedes indirect political accountability; and ministerial responsibility wanes as the integrity industry flourishes.[25] Here is what Australians Richard Mulgan and John Uhr describe as "the changing spirit of accountability"—an abstraction piled on an abstraction—one of which they illustrate with a quotation by Sir Anthony Mason, former Chief Justice of the High Court:

> Our evolving concept of the democratic process is moving beyond an exclusive emphasis on parliamentary supremacy and majority will. It embraces a notion of responsible government which respects the fundamental rights and dignity of the individual and calls for observance of procedural fairness in matters affecting the individual. The proper function of the courts is to protect and safeguard this vision of the democratic process.[26]

For much of Canadian history, the traditional concept of ministerial responsibility—which said Ministers were responsible for what happened in their department—may have accurately reflected the prevailing realities of parliamentary government. Today, absolutism in politics, as in almost every other area of human life, is out of fashion.[27] Deconstructive and postmodern assumptions about authority prevail, which is to say it is diffuse and dispersed. The old verities of anonymity for the civil servant-administrator and a public persona for the elected politicians who make policy choices no longer coincide with the reality of telescoped activities by the two.

That at least is the complaint heard in much of the recent literature on ministerial responsibility—no one is responsible, or everyone is responsible. The interweaving of roles and responsibilities destroys the purity of the fabric of the constitution or, to change metaphors, it "breaks the bargain" of expectations and understanding of how government is supposed to be conducted.[28] The result is that as opposed to a one-on-one relationship of Minister and civil servant, ministerial responsibility may better be envisioned as "a set of nested relationships," of which Minister and civil servant is one, but others include Minister and Minister, Minister and Prime Minister, Parliament and media, media and public opinion.[29]

If this depiction is accurate, or even partly accurate, how then can we affix responsibility, on accounting officers and in parliamentary committees? British academics talk of other avenues, including "a written constitution which ... could place civil servants under allegiance, to the constitution, not to the crown or minister," or a Bill of Rights.[30] Canada has these but no Accounting Officers; Great Britain the reverse. Which is better, or is the question meaningless unless there is agreement on the problem? It does seem evident that in the matter of the Accounting Officer too much is expected in some quarters in Canada. In a paper in which he advocates adopting the British practice, Thomas Axworthy throughout refers to the position as the "accountability officer."[31] The misnomer betrays an analytical and theoretical confusion that does nothing to clarify the concept of ministerial responsibility.

2 Roles

Statutory and other formal provisions are clear but incomplete in defining the roles, responsibilities and accountabilities of Ministers and Deputy Ministers. The legal base of the responsibility of Ministers lies in the Privy Council oath all cabinet ministers take on becoming members of Council. It is the Privy Council which, according to section

11 of the *Constitution Act*, 1867, "aid[s] and advise[s] in the Government of Canada." At any particular time, the current Cabinet is the active part of the Privy Council, although it speaks and acts in the name of the entire Council. "[T]he Governor General acting by and with the advice of Cabinet [is] the first emanation of executive power."[12] Ministerial authority for a portfolio established by departmental statute originates in a second oath Ministers swear on appointment to Cabinet, an Instrument of Advice and Commission under the Great Seal being the necessary formality.

Ministers are chosen by the Prime Minister, their appointment recommended to the Governor General, and their tenure in a portfolio at the discretion of the Prime Minister. Ministerial dismissal or ministerial resignation occurs only on the agreement of the Prime Minister. Similarly, the life of a government is tied to the decision of the Prime Minister, since he or she is the sole adviser to the Governor General.

Deputy Ministers are appointed, and may be dismissed, by the Prime Minister as one of his or her "special prerogatives." That power is regularized in Order in Council going back to Sir Wilfrid Laurier's time. It authorizes the Prime Minister to recommend to Council the appointment and dismissal of Deputy Ministers and the tabling of the Order in Council that does the same. Re-affirmed by successive Prime Ministers until Mackenzie King, it is now regarded as conventionally established. As with Ministers, the Prime Minister's control over senior departmental officers underlines, first, the Prime Minister's importance and, second, the importance of the ministry as a collective entity.

The authority of the Deputy Minister derives from the *Interpretation Act*. The Act states that a Deputy may exercise the power of a "Minister of the Crown to do an act or thing except to exercise any authority ... to make a regulation." But Deputy Ministers are more than alter egos of their Ministers. The *Financial Administration Act* gives broad statutory power to Deputy Ministers in both financial and personnel administration. Deputy Ministers also have responsibilities under other statutes, including the *Public Service Employment Act* and the *Official Languages Act*.

In public pronouncements such as *Guidance for Deputy Ministers* (2003), the Privy Council Office is adamant in maintaining the proposition that "Parliament confers powers of the State on Ministers on the condition that they are accountable to the House for their actions … A Deputy Minister is equally responsible for the authorities equally assigned to him or her by a person … by a body … or by law, regulation or policy."[33] In this depiction, the Minister is the actor and the Deputy Minister the enabler, lacking public voice, or identity, or individual opinion on policy. His or her duty is to support the Minister (and Department), as well as the Prime Minister and the government. Here are grounds for rejecting any suggestion that Deputy Ministers possess authority or responsibility that is not delegated from above. Yet, Franks maintains facts and, more particularly, laws do not sustain the government's contention. Contrary to the statement in *Guidance for Deputy Ministers* that "through departmental legislation, Parliament has vested the 'management and direction of the Department' in the Minister, and enumerated the Minister's 'powers, duties and functions,'" Franks notes that under s. 12(1) of the *Financial Administration Act*:

> The Treasury Board may authorize the deputy head of a department or the chief executive officer of any portion of the public service to exercise and perform, in such manner and subject to such terms and conditions as the Treasury Board directs, any of the powers and function of the Treasury Board in relation to personnel management in the public service and may, from time to time as it sees fit, revise or rescind and reinstate the authority so granted.

The Deputy Ministers are the beneficiaries directly (not indirectly) of powers and responsibilities assigned by statute: "The powers belong to the deputy ministers in their own right."[34] The government's interpretation of ministerial responsibility in Canada conflicts with such explicit assignments of power. The language used in *Guidance for Deputy Ministers* hints, at the same time as it seeks to disguise, the contrast in interpretations: "In addition, certain provisions in the *Financial Administration Act, the Public Service Employment Act*, and the *Official Languages Act* assign some powers directly to the deputy head."[15] Franks has described as "absurd" the proposition that Deputy Ministers are accountable to Ministers in all matters. From his point of view, the proposition undermined (by blurring) the determination of responsibility and accountability.[16] The official Canadian view places Ministers in charge of all things, with the consequence that, notwithstanding the ideal of a merit-based civil service, the partisanization of the bureaucracy or, more especially, of particular programs remains possible.

3 Interpretation

In December 2003, the Privy Council Office published *Governing Responsibly: A Guide for Ministers and Ministers of State*.[17] In an abbreviated text, the Guide discussed, among other topics, individual and collective ministerial responsibility, ministerial accountability and answerability, and the "complex set of multiple-accountabilities" that face Deputy Ministers. Although terse, the document's language clearly reflected the concerns of the era that produced it—responsibility, responsiveness, participation, accountability, and more. Perhaps because it was intended as a guide for politicians and not a constitutional exegesis, the statement lacked theoretical foundation and, consequently, conviction. "Parliamentary accountability," it states, "recognizes that only the person to whom responsibility and authority are assigned can take action." The consequences of this assertion of the government's position have yet to be explored.

Yet there is a rationale, a strongly articulated one, to be found in an earlier Privy Council Office publication, *Responsibility in the Constitution*.[18]

Originally in the form of a submission in 1979 to the (Lambert) Royal Commission on Financial Management and Accountability, and republished in 1993 to give it wider circulation, *Responsibility in the Constitution* is precise in the theory of the constitution it advances. According to that theory, "constitutional responsibility" is "elemental": "Ministers are constitutionally responsible for the provision and conduct of the government." The importance of that brief — and at first glance, unexceptional — description cannot be exaggerated, for the reasons that follow. Individual ministerial responsibility is based on law (the Privy Councillor's oath and the specific statute setting out a particular Minister's duties and powers); collective ministerial responsibility is based primarily on convention. The Minister is "personally answerable to the House of Commons." As a result, he or she is "unique" and distinct from "others who hold office under the Crown." Significantly, for a paper written 30 years ago, *Responsibility in the Constitution* adopts an unorthodox (for its time) view of ministerial resignation: "Because the House determines the circumstances in which it operates, the principle has … flexibility [while] … the circumstances [are] … a matter of political judgement and bear little relationship to whether a minister had prior personal knowledge of the events for which he or she is being held responsible."

Individual ministerial responsibility is "personal" not "institutional." "It is shared with no one." Here are the grounds for statements a quarter century later in *Governing Responsibly* that "Ministers must respect the non-partisan nature of the Public Service of Canada," that "Ministers are individually responsible to Parliament and the Prime Minister for their own actions and those of their department, including the actions of all officials under their management and direction, whether or not the Ministers had prior knowledge," and that "clear ministerial accountability to Parliament is fundamental to responsible government."[60] Here too are grounds for the Government of Canada's objection to following the

British practice of designating senior officials as Accounting Officers. The image that informs the argument in *Responsibility in the Constitution* is of a pyramid: "Each minister's actions reflect the individual and collective responsibilities of the system that has been built up to ensure that they and their subordinates in the public service exercise power in a manner acceptable to a majority of the elected house of Parliament."[40]

It is the thesis of *Responsibility in the Constitution* that ministerial and prime ministerial control of finance and appointments made responsible government possible. Sharing those powers with the bureaucracy, on the one hand, or, the legislature, on the other, would dilute constitutional responsibility. The same argument is used to rebut Canadian critics who say appointment of Deputy Ministers on the advice of the prime minister depreciates ministerial power. On the contrary, according to advocates of Canadian practice, the prime minister's power in this matter ensures "the solidarity of the ministry." That is an object to be sought in a huge country, with a small population divided into regions and by languages, where political parties have little ideology but to win elections, and who, for that reason, depend upon the mobilizing inducements of patronage and public expenditures. The "tone" of a government is set at the top through the imposition of collective ministerial responsibility, but the policies of government "flow from the exercise of individual ministerial responsibility."[41]

It is clear from the documents discussed above and from the recent *Guidance for Deputy Ministers* (2003) that, in the eyes of government, ministerial responsibility rests with the Minister: "If a departmental official makes a mistake, the requirements of ministerial responsibility are satisfied when the Minister answers in Parliament for the mistake and implements the necessary action." The political as opposed to the administrative tentacles are more complex than that statement allows. In the matter of Deputy Ministers, the obligations, loyalties and, sometimes, referents, may circumvent ministers: "The appointment of

Deputy Ministers on the recommendation of the Prime Minister," says the *Guidance for Deputy Ministers* document, "reflects the Prime Minister's responsibility for the government's overall performance." Affirmation that ministerial responsibility in Canada is more than one-dimensional can be found in the following conclusive statement: "In the end, the Prime Minister, with the advice of the Clerk of the Privy Council, will determine what, if any, action is appropriate, with respect to the Deputy Minister's accountability." For the Deputy Minister, the Prime Minister guards the gate leading to his or her career advancement. For the Prime Minister, the Deputy Minister has it within his or her capacity—because of the Deputy Minister's pre-eminent administrative role—to undermine the competence of as well as public confidence in government. Ministers are sensitive to the anxieties and expectations associated with this relationship. At the same time, their own ambitions, desires and skills (or failings) raise the complexity of ministerial responsibility to another dimension. As with so much else in Canadian politics, ministerial responsibility can only be understood and appreciated as a ruling concept against the backdrop of prime ministerial government.

4 Comparisons

In this respect, Canada is no different from other systems of parliamentary-cabinet government. In Great Britain, Australia and New Zealand, Prime Ministers rule. Demonstrations of that truth are easy to find, though seldom stated so explicitly or fully as in the *First Report of the Senate Pay Television Committee* in Australia. One chapter of that four-chapter Report is devoted to a discussion of ministerial responsibility. Among its observations are the following excerpted comments, identified by paragraph number:

> (2.11) Whether a minister … is to be asked to resign or be dismissed is a political issue and is one for the leader to resolve.

> (2.15) [T]he leader must reach a decision balancing a value judgment about the gravity of the minister's failing and a pragmatic judgment as to what is best for the government's future …
>
> (2.21) Given the ability a leader has to see ministers dismissed, it might appear at first impression that when they err their fate is determined with scant regard to principle. That impression may arise partly through confusing judicial and political processes for resolving issues.
>
> (2.22) The judicial process involves applying existing and specific laws to a set of facts to reach a decision in accordance with natural justice. The political one involves making an assessment of a variety of influences and pressures and acting according to what they allow.
>
> (2.23) These political influences and pressures on leaders will usually include ethical ones, including their own sense of morality and community standards. Leaders are subject to real constraints, including peer pressure, oversight by Parliament, scrutiny by the press, party discipline and consciousness of the next election.
>
> (2.24) Rules of natural justice do not apply to leaders' decisions to have ministers dismissed. But though their decisions are not determined by a set of legal principles and procedures, as would those of a judge, they are nonetheless subject to powerful influences prompting them towards proper conduct.[43]

There are two reasons for citing this Report at such length. First, the contrast it posits between politics and law, and its application of the former but not the latter to the issue of ministerial responsibility, constitutes a rare acknowledgement in the literature on ministerial responsibility of a fundamental distinction between the two. More common today is the disposition to substitute the latter for the former. Consider, as illustration, the remark by Great Britain's Sir Richard

Scott, author of the *Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions*, 1995-1996 (popularly known as the Scott Report, on the sale of arms to Iraq):

> But it must be recognized that if the obligations of accountability are not accepted by ministers, both in principle and in practice, as binding, and are not, where necessary, enforced by Parliament, the remedy can only lie in reducing at least that part of our unwritten constitution into statutory form.[44]

At issue in the Scott Inquiry was "whether government Ministers had acted unconstitutionally in misleading Parliament over government policy in this area. Scott found that they had. The government disagreed and sought vigorously to defend itself."[45] Here, surely, is an elemental disagreement, explanation of whose source is essential when discussing ministerial responsibility. Remarkably, the difference remains largely unexplored in the literature on ministerial responsibility. "Training, culture, and context" have been offered as "contributing factors," but the difference itself is minimized in favor of the familiar institutional critique, that is, ministerial responsibility as one more casualty in the decay-of-Parliament thesis.

Party discipline fortifies the Prime Minister but does not favor the ordinary member. MPs cannot hold Ministers to account, if by that is meant to compel their resignation. At best, the instruments of the Commons—Question Period, committee and estimates debates—require a giving of account by the Minister. Yet, as the passages from the *Report of the Senate Pay Television Committee*—a legislative body—take care to note, ministerial dismissal is an act of the Crown following prime ministerial advice. Legislatures have never been in a position to dismiss or directly cause the resignation of a Minister, although it might be argued that they are in a stronger position today to apply pressure to this end because of the ubiquity of modern telecommunications and the attention paid to public opinion. It is also the case, says a former public service minister in Great Britain that party discipline requires ministers "to win and hold the confidence of [their own] Party colleagues."[46]

The second reason for citing the Australian Senate Report is one noted at the beginning of this study: parliamentary-cabinet government is not a Canadian preserve. On the contrary, it is a shared inheritance and a present activity: the Australian Senate Report bears out this latter claim, when it cites not only Australian but British and Canadian practice to support its view that "issues of maladministration … have not resulted in resignation (2.20)."

To the unhistorically-minded, the health of ministerial responsibility, as indicated through ministerial resignations, may seem in decline. The statistics cited earlier offer conflicting support for whatever interpretation is given them. In the modern discussion of the concept, numbers are irrelevant. What cannot be ignored, however, is the force of the idea. Woodhouse, quoting Geoffrey Marshall, says the convention, which may "in extreme circumstances" lead to resignation, can be seen to contain "the rules by which the 'political actors ought to feel obliged.'"[47] It is that moral imperative that leads Woodhouse to shift the emphasis away from culpability and toward what she calls amendatory action.[48] An analogous sentiment is to be found in the writing of Judith Shklar, who argues that "hierarchical principles [even in the absence of hierarchical structures] can be sustained only by what [she] calls the 'necessary myth' of 'guilt at the top.'"[49]

Here is an answer to the critics' lament that too often in the complex structures of modern government, made more attenuated today than in the past by the proliferation of non-departmental public agencies, no one seems to be responsible. In New Zealand, where in 1995 a viewing platform built by the Department of Conservation collapsed killing 14 people, the Woodhouse and Shklar perspective emerged in another guise, the concept of vindicative political responsibility. According to New

Zealand academic Robert Gregory, vindicative responsibility is "the middle-way" between culpability and no-fault. It arises not as a consequence but as a confirmation that "a governmental system is actually capable of caring about those who are victimized by its failings." At issue here is not what went wrong or why (the accountability factor), although this must be investigated and resolved, but rather that "the humanity and justice of impersonal governmental systems need to be at least symbolically affirmed." Why this is necessary could scarcely be more fundamental: "Political legitimacy demands that at least a symbolic level of democratic control is maintained."[50]

Nor is this Gregory's view alone. Australian political scientists Richards Mulgan and John Uhr concur:

> [T]he very term "responsible government" suggests that this governance system is one of delegations of trust which are made conditional on continued confidence of the delegator in the delegatee: the people place great responsibilities in Parliament to represent the nation, and Parliament in turn places great responsibilities in the government of the day to exercise its office as one of trust. Accountability is the bridge between trust and confidence …
>
> But what happens when this bridge of accountability fails for whatever reason to allow the easy traffic of trust and confidence? Difficult enough are the situations where Parliament, or one of the two houses of Parliament, revokes the confidence that it has placed in an executive or a minister in the political executive. But much more troubling is the situation of popular withdrawal of confidence in "the government," because, typically, government is no longer "responsive" to the community.[51]

Can it be assumed that the middle way crosses this "bridge of accountability?" Where does it lead? Gregory notes that the Minister of Conservation and the Department's chief executive officer were slow in resigning their positions. How is one to read this comment? How different is vindicative from vindictive responsibility; is resignation still not the one true measure?

A less philosophical response to the conundrum of modern ministerial responsibility is to establish a code of conduct to guide ministerial behaviour. Australia's *Guide on Key Elements of Ministerial Responsibility* (1996) followed the Senate Committee Report on Pay Television.[52] The Committee had recommended a Code of Conduct for Ministers. The Guide, a 27 page document, devotes two pages to "ministerial conduct," mainly about dealing with lobbyists and potential conflicts of interest. (The title of the Guide speaks of "ministerial responsibility," although its Table of Contents uses the plural "responsibilities," while the Guide concerns itself with a range of matters, including facilities and services for ministers.)

Of similar origin—that is, prompted by scandal (this time, arms-to-Iraq) and followed by an inquiry (here chaired by a senior judge)—Great Britain's *Ministerial Code* and *Civil Service Code* are more elaborate affairs. The explanation is suggested in David Butler's assessment of the Scott Report: "[I]t represents the most exhaustive study ever produced of one aspect of that key Westminster doctrine, the individual responsibility of ministers. It is also a fascinating document for what it reveals about the working of bureaucracy and the inter-relationship between ministers and civil servants."[53] It is the study of that relationship that raises the Scott Report above the particular facts of the arms sales or the dissimulation of the politicians when questions were asked in the House. The relevance of the Scott Report to this study lies in its unequivocal pronouncement that "the obligation of Ministers to be forthcoming with information in answer to [parliamentary questions] about their departments' activities lies … at the heart of the important constitutional principle of Ministerial accountability."[54]

More than that, the Report advances a debate that began a decade earlier at the time of another scandal (Westland), which resulted in the composition of the Armstrong Memorandum, which was penned by Sir William Armstrong, then Head of the Home Civil Service.[55] Its title, "The Duties and Responsibilities of Civil Servants in Relation to Ministers" and, more specifically, its contents, as revealed in such statements as "the civil service … has no constitutional personality or responsibility, separate from the duly elected Government of the day," or "the duty of the individual civil servant is first and foremost to the Minister of the Crown who is in charge of the Department in which he or she is serving," suggest a unity of mind on the part of civil servants and Ministers, which had become less absolute by the time of the Scott Inquiry: "[T]he Armstrong Memorandum cannot be given the interpretation that a civil servant has no duties except to the Government of the day."[56]

A new *Civil Service Code* came into force in January 1996, following upon the Scott Report and consideration of the Report by the Treasury and Civil Service Committee of the House of Commons. While the Code maintained the Armstrong-Memorandum view that civil servants were servants of the Crown, the Code set that relationship in the broader "context of the duties and responsibilities of Ministers." For the first time, these were stated to include such matters as giving Parliament full information; not deceiving or knowingly misleading Parliament or the public; and not asking civil servants to act in ways that would conflict with the *Civil Service Code*.[57]

Codes are a manifestation of "the audit society."[58] To those who sneer at codes (or watchdogs, or charters, or inspectors) as the product of an adolescent Boy Scout mentality, Lord Nolan, retired Law Lord and chairman of the Committee on Standards in Public Life (set up by the government of John Major after the cash-for-questions scandal), strongly dissents. Codes, he says, fill ethical vacuums, are found in many professions, and provide continuity in a political world marked by personal turnover and policy change.[59] For Vernon Bogdanor, however, the turning point is "whether the function of a Parliamentary Commissioner for Accountability would be so political as to compromise his or her position."[60] Note that the reservation is not about the Commissioner but about his or her function being politicized.

At the present time, it is early days in the life of the Ethics Commissioner in Canada's House of Commons. The initial occupant, Bernard Shapiro, has been subject to extraordinary criticism as regards his competence as an Officer of Parliament. At issue is his independent judgment as to which public office holders fall within his mandate for investigation. More specifically, does the conduct of special (that is, political) advisers fall within the responsibility of their Minister in the same manner as does the conduct of civil servants who report directly or indirectly to the Minister? This is a matter of significance for the principle of ministerial responsibility and for the operation of parliamentary-cabinet government. Referring to an incident the details of which are not relevant to the theme of this study, the Ethics Commissioner has observed (after some indecision) that the "Prime Minister is ultimately responsible to Parliament for the action of [his Chief of Staff]."[61]

Shapiro's testimony to the Commons committee lends support to Bogdanor's concern about the politicization of accountability processes. Contrary to the claim made by Ed Broadbent, a member of the committee, that the Commissioner's decisions should be rendered in "black and white," enough has been said in this paper to support the contrary conclusion that the principle and practice of ministerial responsibility is ambiguous and complicated.[62] At least in Canada, as Mr. Shapiro's indecisiveness demonstrates. But not in Australia, where *A Guide on Key Elements on Ministerial Responsibility* concisely states:

> Ministers' direct responsibility for actions of their personal staff is, of necessity, greater than it is for their departments. Ministers have closer day-to-day contact with, and direction of the work of, members of their staff. Furthermore, ministerial staff does not give evidence to parliamentary committees, their actions are not reported in departmental annual reports, and they are not normally subject to other forms of external scrutiny, such as administrative tribunals …
>
> Ultimately, however, ministers cannot delegate to members of their personal staff their constitutional, legal or accountability responsibilities. Ministers therefore need to make careful judgments about the extent to which they authorize staff to act on their behalf in dealings with departments."[63]

As a doctrine, ministerial responsibility ought to be easy to clarify, especially in Canada, where Ministers are all powerful. That may be part of the problem: omnipotent Ministers will always be under scrutiny and, frequently, attack. Rendering account is never satisfactory, when, in the eyes of opponents, being held to account is politically more advantageous. Ministerial responsibility is about politics. This is an obvious point but one that needs emphasizing. More than that, ministerial responsibility is a parliamentary concept, enforced by the House of Commons. What form that enforcement takes—whether it might go so far as to call for resignation—depends upon the support (or loss of support) for a Minister, as indicated by the actions of the House and the party caucus, but most of all by the response of the Prime Minister. Only here, in this constellation of calculations, does ministerial responsibility take form, be it resignation from office, or amendatory or vindicative action, or the provision of accurate and truthful information. Half a century ago, S.E. Finer observed that ministerial responsibility is "a statement of fact not a code."[64] Arguably, in parliamentary government there is very little that is subject to code.

Losing support of the people or losing support of the House is not always determined by reference to numbers.

Are there ways to cut through the haze of understandings and precedents that envelop ministerial responsibility and that make it such an unseizable convention? Codes of behaviour, which owe much to "a post-Watergate mentality" (a reference to the White House-sanctioned break-in of the Democratic Party's National Committee offices in the Watergate Hotel in Washington in 1972), offer one alternative, although their enforcement has done little to reduce controversy that surrounds debate about ministerial responsibility.[65] The same can be said of Officers of Parliament, and especially the Office of the Auditor General. British academic, Brian Thompson, says of the contrast between Whitehall and Westminster, "the cultural is constitutional."[66] Similarly, the accountability gap in Canada is more than a matter of flawed auditing. It lies in a collision of political and administrative cultures, evident in the different values they embrace, and in their selective and random espousal by politicians, the media and the public.

For the public especially, the traditional boundaries of the debate are disappointing and confusing since they do not admit of public expectations. Modern emphasis upon openness, responsiveness and transparency fits awkwardly with a convention whose practice is determined by shifting calculations of partisan advantage. The belief that resignation is an inevitable stage in the execution of ministerial responsibility makes neither theoretical nor practical sense in parliamentary politics. What does? Do accounting officers not finesse the issue of accountability, which is essentially political? Is there any other exit from this labyrinth of doubt but at where it begins—with Ministers (and no one else), personally and individually, standing in their place in Parliament and facing down, if they can, attacks on the administration of their department and on their leadership?

5 Conclusion

Ministerial responsibility is a layered concept with different meanings—accountability, responsibility and answerability; involving multiple individuals and bodies—the Prime Minister, Ministers, Deputy Ministers, government departments and agencies; and demonstrating a variety of responses—from resignation through providing information to offering apologies. Examination of other Westminster-based systems reveals the same characteristics: layered and diffuse. In each country, there have been attempts to clarify its meaning. But those attempts, themselves, have proven both layered and diffuse. That is, ministerial responsibility has been compartmentalized, as the themes of this paper have done, in order to concentrate attention on a particular element of the concept—in this case, the relationship of Minister and Deputy Ministers. Or, the concept has been subjected to a broad ranging, theoretical analysis, as in the Scott Report. Neither alone is satisfactory from the perspective of making the doctrine more understandable to the public, the politicians or public servants.

Ministerial responsibility has a narrow statutory base. Its operation is principally derived from convention. In Great Britain, support for codifying the doctrine and even giving it a statutory foundation has followed, first, upon a series of highly publicized cases where ministerial responsibility was perceived to have failed and, second, following equally publicized inquiries into the reason for that failure. This is not the case in Canada, where academic debate has focused largely on the relationship between Minister and Deputy Minister. The explanation lies in a long-running argument to make Deputy Ministers "directly and personally responsible and accountable to Parliament for statutory authorities that are assigned explicitly ... by Parliament and for those authorities that are conferred directly ... by the Public Service Commission and the Treasury Board." In other words, Canada should adopt the Accounting Officer model, a move that would promote accountability by clarifying who makes major administrative decisions.

Only in Canada is ministerial responsibility—even when confined to the topic of Accounting Officer—linked to the larger subject of prime ministerial government. Deputy Ministers are appointed—and their careers influenced—by the Prime Minister. Making Deputy Ministers Accounting Officers on the British model would promote greater independence for the Deputy, greater opportunity for parliamentary committees to hold Deputy Ministers to account, and greater restraint, even if modestly so, on Ministers and the Prime Minister.

6 Recommendations

The recommendations that follow have as their principal object the clarification of the doctrine of individual ministerial responsibility for the benefit of the public, politicians and public servants.

- *A parliamentary resolution should be passed* ***to define the convention of individual ministerial responsibility****. Its contents should include reference to the following subjects: the object of the doctrine; its breadth (whether limited to public servants or to include, for instance, political staff of Ministers), as well as theoretical rationale for the position taken; and the principle that should obtain between Ministers and Deputy Ministers, who unlike other public servants, have assigned to them specific statutory authorities and accountabilities;*

- *A parliamentary protocol should be adopted* ***to define the powers of Parliament and its committees in the implementation of the doctrine of individual ministerial responsibility****..Among the topics to be included: the range of sanctions available to Parliament and its committees in order to fulfill their assigned role; and,*

- ***The British model of Accounting Officer*** *(with adaptation to the Canadian public service)* ***be introduced for an experimental period*** *(three Parliaments, perhaps) or for a limited number of departments, to be subject to review as to its contribution toward improving the practice of individual ministerial responsibility.*

Endnotes

[1] "Speaker's Ruling on the Application of the Progressive Conservative Democratic Representative Coalition for Recognition in the House of Commons," *Commons Debates*, 24 September 2001, p. 5489.

[2] Earl Grey to Sir John Harvey, 31 March 1847, Brit. H. of C. Papers (621) xlii, 1847-8, p. 79 quoted in R. MacGregor Dawson, *The Government of Canada* (5th ed., revised by Norman Ward, Toronto: University of Toronto Press, 1970), p. 236.

[3] Thomas S. Axworthy, "Addressing the Accountability Deficit: Why Paul Martin's Minority Government Must Pay More Attention to the Three A's," p. 2. www.queensu.ca/csd/AcountabilityDeficit-IRPP.pdf.

[4] Norman Lewis and Diane Langley, "Ministerial Responsibility: The Next Steps," *Public Law* (1996): p. 493.

[5] David Butler, "Ministerial Accountability: Lessons of the Scott Report," Senate Occasional Lecture Series, *Papers on Parliament*, No. 29 (March 1997), p. 6. www.aph.gov.au/Senate/pubs/pops/pop29/c01.pdf.

[6] Sharon Sutherland, "Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem," *Canadian Journal of Political Science*, 24, no. 1 (March 1991): pp. 91-120. See too, David A. Good, *The Politics of Public Management: the HRDC Audit of Grants and Contributions*. (Toronto: University of Toronto Press, 2003), pp. 14-20.

[7] Butler, "Ministerial Accountability: Lessons from the Scott Report," pp. 5-6.

[8] See notes 5 and 6.

[9] James R. Mallory, "Responsive and Responsible Government," *Transactions of the Royal Society of Canada*, 12 (1974): p. 210.

[10] Diana Woodhouse, "The Reconstruction of Constitutional Accountability," Newcastle Law School Working Papers 2000/01 (to have been delivered to the Newcastle Law School Staff Seminar Series on 8 November 2000), p. 2. www.ncl.ac.uk/nuls/research/wpapers/woodhouse1.html; Public Policy Forum, "Ministerial Accountability: Suggestions for Reform," (Report from a series of roundtables of experts, June 2004), p. 4. www.ppforum.com/ow/ministerial_accountability.pdf; Senate of Canada and House of Commons, Proceedings… 2 October 1995: pp. 4 - 6 (Sharon Sutherland).

[11] Kenneth Kernaghan, "Ministerial Responsibility: Interpretations, Implications and Information Access," (August Report 4 Access to Information Review Task Force, 2001), p. 2, http://www.atirtf-geai.gc.ca/paper-ministerial-e.html.

[12] In Public Policy Forum, "Ministerial Accountability: Suggestions for Reform," the same sentiment appears in the following statement: "Parliament is entitled to know how the powers of the state are being exercised by the government." A further complication arises where "private governance of public business [is] preferred over ministerial governance." Peter Aucoin, "Independent Foundations, Public Money and Public Accountability: Whither Ministerial Responsibility as Democratic Governance?" *Canadian Public Administration*, 46, no. 1 (spring 2003): p. 22. See too "Placing the Public's Money Beyond Parliament's Reach, 2002," *Report of the Auditor General of Canada*. http: /www.oag/bvg.gc.ca/domino/reports.nsf/html/02pr01_e.html.

[13] Woodhouse, "The Reconstruction of Constitutional Accountability," pp. 1-5.

[14] John C. Tait (chair), *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics* (Ottawa: Canadian Centre for Management Development, 1996), p. 11.

[15] Douglas G. Hartle, "The Report of the Royal Commission on Financial Management and Accountability (The Lambert Report): A Review," *Canadian Public Policy*, 5, no. 3 (Summer 1979): p. 372.

[16] Sutherland, "Responsible Government and Ministerial Responsibility," p. 108.

[17] James R. Mallory, "The Uses of Legislative Committees," *Canadian Public Administration*, 6, no. 1 (March, 1963): p. 4.

[18] Daniel J. Elazar, "Our Thoroughly Federal Constitution," in *How Federal is Our Constitution?* ed. Robert A. Goldman and William A. Schambra (Washington: American Enterprise Institute for Public Policy Research 1987), p. 56.

[19] Bruce Hutchinson, *The Incredible Canadian* (Toronto: Longmans Green, 1952), p. 431. Gardiner's biography is Norman Ward and David Smith, *Jimmy Gardiner: Relentless Liberal* (Toronto: University of Toronto Press, 1990).

[20] *Responsibilities of an Accounting Officer*, paras. 5-6 in C.E.S. Franks, "Accountability to Parliament for Financial Matters in the British System" (unpublished, 8 December 2004), pp. 3-4.

[21] *Commission of Inquiry into the Sponsorship Program and Advertising Activities*, Public Hearing, vol. 121, 17 May 2005, 22607.

[22] Ireland, *Report of the Working Group on the Accountability of Secretaries General and Accounting Officers* (July 2002). http://www.finance.gov.ie/viewdoc.asp?DocID=935&catID=33&star&Date=14, Jan. For a Canadian debate on the subject of accounting officers, see C.E.S. Franks, "Not Anonymous: Ministerial Responsibility and the British Accounting Officers," *Canadian Public Administration* 40, no. 4 (Winter 1997): pp. 626-52 and J.R. Mitchell, "Reply to C.E.S. Franks," *Canadian Public Administration*, 40, no. 4 (Winter 1997): pp. 653-7.

[23] David Butler, "Ministerial Accountability: Lessons of the Scott Report," p. 10.

[24] Ireland, *Report of the Working Group on the Accountability* … para. 23.

[25] See Bruce Ackerman, "The New Separation of Powers," *Harvard Law Review*, 113 (2000): pp. 633-729. See too Oonagh Gay and Barry K. Winetrobe, *Officers of Parliament — Transforming the Role* (London: The Constitution Unit, April 2003) and Haig Patapan, "Educating Devils: Theoretical Reflections on Ethics and Governance" in *Motivating Ministers to Morality*, ed. Jenny Fleming and Ian Holland (Burlington, Vt.: Ashgate Dartmouth, 2001), p. 30.

[26] Richard Mulgan and John Uhr, "Accountability and Governance," Discussion Paper No. 71, Public Policy Program, ANU, Canberra (September2000),p.8.http://www.anu.edu.au/pubpol/ht_docs/discussp.html; Sir Anthony Mason, "Future Direction in Australian Law," *Monash Law Review* (1987), quoted in Mulgan and Uhr, "Accountability and Governance," p. 9.

[27] This theme is developed more fully in Peter Barberis, "The New Public Management and A New Accountability," *Public Administration*, 76 (Autumn 1998): pp. 451-70.

[28] See Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers and Parliament* (Toronto: University of Toronto Press, 2003).

[29] John Uhr, "Ministerial Responsibility in Australia: 2005" (2005 Constitutional Law Conference, UNSW, Sydney, 18 February 2005), p. 5, http://www.gtcentre.unsw.edu.au/John-Uhr.Paper.doc

[30] Barberis, "The New Public Management and a New Accountability," p. 462. References here are to R. Hazell, "Making the Civil Service More Accountable," in *Debating the Constitution: New Perspectives on Constitution Reform*, ed. A. Barnett, C. Ellis and P. Hirst (Cambridge; Polity, 1993), pp. 115-118 and A. Lester, "A Bill of Rights for Britain," in *Debating the Constitution*, pp. 39-43. See too Vernon Bogdanor, "Ministerial Accountability," in *Parliamentary Affairs*, 50, no. 1 (January 1997): pp. 71-83 at p. 79f.

[31] Thomas S. Axworthy, "Addressing the Accountability Deficit: Why Paul Martin"s Minority Government Must Pay More Attention to the Three A's." www.queensu.ca/esd/AccountabilityDeficit-IRPP. pdf.

[32] *Angus v. Canada* (1990), 72 DLR (4th), 684 (FCA), cited in Gregory Tardi, *The Legal Framework of Government: A Canadian Guide* (Aurora: Canada Law Book, 1992), p. 83.

[33] Canada. Privy Council Office, *Guidance for Deputy Ministers* (2003), pp. 1-2.

[34] Canada. Privy Council Office, *Guidance for Deputy Ministers*, p. 2 and C.E.S. Franks, "Ministerial and Deputy Ministerial Responsibility and Accountability in Canada," p. 15.

[35] Canada. Privy Council Office, *Guidance for Deputy Ministers*, p. 8 (emph. added).

[36] Franks, "Ministerial and Deputy Ministerial Responsibility and Accountability in Canada," p. 23.

[37] Canada. Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State* (2003).

[38] Canada. Privy Council Office, *Responsibility in the Constitution* (1993). Quotations in this paragraph come from pp. 3-7. (Emph. in orig.).

[39] Canada. Privy Council Office, *Governing Responsibly*, iv, pp. 5-6 and p. 15.

[40] Canada. Privy Council Office, *Responsibility in the Constitution*, p. 37.

[41] Ibid., p. 62.

[42] Canada. Privy Council Office, *Guidance for Deputy Ministers* (2003), p. 26. publiservice.pco-bcp.gc.ca/docs/Publications/gdm-gsm/gdm-gsm_e.pdf . Other quotations in this paragraph are from pp. 26-27 of this document.

[43] Australia. Parliament of Australia, Senate. *First Report, Senate Pay Television Committee* (September 1993). www.aph.gov.au/Senate/committee/history/paytv_ctte/paytv1/.

[44] Sir Richard Scott, "Ministerial Accountability," *Public Law* (1996): p. 426.

[45] Adam Tomkins, "In Defence of the Political Constitution," *Oxford Journal of Legal Studies*, 22, no. 1 (2002): p. 168.

[46] Barry K. Winetrobe, Home Affairs Section, *The Accountability Debate: Ministerial Responsibility*, Research Paper 97/6, 28 January 1997, p. 31. The speaker was Roger Freeman in an address to the Civil Service College, July 1996.

[47] Diana Woodhouse, "The Role of Ministerial Responsibility in Motivating Ministers to Morality," in *Motivating Ministers to Morality*, p. 37. The internal quotation is from G. Marshall, *Constitutional Conventions*, (Oxford: Clarendon Press, 1986), p. 12. (emph. in orig.)

[48] See above, p. 7.

[49] Judith Shklar, *The Faces of Injustice* (New Haven: Yale University Press, 1990), pp. 63-64 quoted in Robert Gregory, "Political Responsibility for Bureaucratic Incompetence: Tragedy at Cave Creek," *Public Administration*, 76, no. 3 (Autumn 1998): p. 532.

[50] Robert Gregory, "Political Responsibility for Bureaucratic Incompetence: Tragedy at Cave Creek," pp. 533, 519 and 531.

[51] Richard Mulgan and John Uhr, "Accountability and Governance," Discussion Paper No. 71 (Public Policy Program), ANU, (Canberra (September 2000), http://www.anu.edu.au/pubpol/ht_docs/discussp.html.

[52] Australia. Prime Minister. *A Guide on Key Elements of Ministerial Responsibility*, Canberra, December 1998. http://www.pmo/gov.au/guidelines/docs/ministerial_responsibility.rtf. In a study of "Ministerial Codes, Cabinet Rules and the Power of Prime Ministers," in *Motivating Ministers to Morality*, p. 52, Patrick Weller refers to this document as a *Guide to Ministerial Conduct*, p. 52.

[53] David Butler, "Ministerial Accountability: Lessons of the Scott Report," p. 2.

[54] Quoted in ibid., p. 10.

[55] The reference is to "the leaking of two documents about the Westland Helicopter Company which [in the 1980s] was the subject of Cabinet-level discussion and disagreement about the choice between two 'rescue packages', one European, the other American. The circumstances of the leak suggested that civil servants had been involved, possibly on the instructions of Ministers." *The BSE Inquiry: The Report (The Inquiry into BSE and variant CJD in the United Kingdom)*. Vol. 15: Government and Public Administration 8. Standards and Accountability. www.bseinquiry.gov.uk/report/volume15/chapteg2.htm.
For the Armstrong Memorandum ("How to be a Civil Servant"), see http://www.civilservant.org.uk/armstrong.shtml.

[56] *The BSE Inquiry: The Report* ... vol. 15: Government and Public Administration, 8.32. (emph. in orig.)

[57] The *Civil Service Code* is found at
http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service_code.asp
The Ministerial Code, along with its Annex, "The Seven Principles of Public Life," is available at http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/ministerial_code/.

[58] For a rigorous examination of the topic, see Michael Power, *The Audit Society: Rituals of Verification* (Oxford: Oxford University Press, 1997). See, too, Onora O'Neill, *A Question of Trust* (Cambridge: Cambridge University Press, 2002).

[59] Rt. Hon. Lord Nolan, "Motivating Ministers to Morality," in *Motivating Ministers to Morality*, p. 17.

[60] Vernon Bogdanor, "Ministerial Accountability," *Parliamentary Affairs*, 50, no. 1 (January 1997): p. 82.

[61] Simon Doyle, "Martin, Chief of Staff Face Ethics Investigation," *Star-Phoenix* (Saskatoon), 24 June 2005, A11.

[62] Jack Aubry, "Sgro in Conflict of Interest, Ethics Commissioner Finds," *Star-Phoenix* (Saskatoon), 22 June 2005, C4.

[63] Australia. Prime Minister, *A Guide on Key Elements of Ministerial Responsibility*, 13-4. But see the following dissent: "[W]here a minister claims inability to answer a question because of no personal involvement, but the minister was involved, then parliament should have the right to interrogate the adviser. Without this, not only do both adviser and minister escape responsibility, but public servants are 'placed in the front line' and instead of ministers answering for their [sic] actions of officials and advisers, officials defend ministers and their staff." Michael Keating, "Ministerial Advisers and the Search for Accountability," in *Australian Institute of Administrative Law Forum*, No. 34, cited in Australia National University Political Science Program, "Changing Patterns of Accountability in Westminster Systems: A UK Perspective" (21 April 2005), pp. 6-7. As well, see Anne Tiernan, "Problem or Solution? The Role of Ministerial Staff," in *Motivating Ministers to Morality*, pp. 90-103, who notes that in "the Travel Rorts Affair ... a minister relied upon his personal staff to provide administrative as well as political advice, blurring the conventional demarcation of roles between advisers and bureaucrats." p. 101.

[64] S.E. Finer, "The Individual Responsibility of Ministers," *Public Administration*, 34 (Winter 1956): p. 394.

[65] G. Calvin Mackenzie, Scandal Proof: *Do Ethics Laws Make Government Ethical?* (Washington: The Brookings Institution, 2002), p. 31.

[66] Brian Thompson, "Whitehall's Cultural Revolution," *Web Journal of Current Legal Issues*, 1 (1995). Webjcli.ncl.ac.uk/articles1/thomps1.rtf.

[67] Peter Aucoin and Mark D. Jarvis, *Modernizing Government Accountability: A Framework for Reform* (Ottawa: Canada School of Public Service, 2005), p. 10.

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MINISTERIAL STAFF: THE LIFE AND TIMES OF PARLIAMENT'S STATUTORY ORPHANS

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1 Where to Start

1.1

Introduction

Of the many footfalls heard echoing through Ottawa's corridors of power, those that often hit hardest but bear the least scrutiny belong to an elite group of young, ambitious and politically loyal operatives hired to support and advise the Ministers of the Crown. Collectively known as "exempt staff,"[1] recent investigations by the Public Accounts Committee and the Commission of Inquiry into the Sponsorship Program and Advertising Activities, hereafter referred to as the "Sponsorship Inquiry", suggest that this group of ministerial advisors can, and often do, exert a substantial degree of influence on the development, and in some cases, administration, of public policy in Canada. Further, it is evident from the current and historic record that these powers can and are, on occasion, open to abuse. Though unelected, often uneducated in the theory and operation of the machinery of government and regularly devoid of professional qualifications relevant to the ministries with which they are involved, these individuals, by virtue of their political relationship with the party in power and/or the minister they serve, are well placed to influence both the bounce and bobble of bureaucratic-political interface and the pace and progress of public policy in Canada.

1.2

Scope

This paper will explore the current role and function of ministerial exempt staff, their relationship to the bureaucracy, their Ministers and external stakeholders. It will examine the formal or informal checks and balances, if any, that exist within the system to ensure that these duties are carried out in an appropriate and ethical manner commensurate with the guidelines published by the Treasury Board Secretariat (TBS) and the Privy Council Office (PCO) and all other applicable codes and legislation. Recent and historic "scandals" such as the affairs of Rivard and Al Mashat, and more recently, Judy Sgro and Tim Murphy will also be explored as emblematic of the misadventures of political staffers and the impact that their actions, inactions or wrongdoings can effect on political fortunes in Canada.

Of particular relevance to the work of the Sponsorship Inquiry is an examination of the careers of former Public Works and Government Services (PWGS) Minister Alfonso Gagliano's Chief of Staff, Pierre Tremblay, and his Special Assistant, Isabelle Roy. Their appointments directly into the PWGS department tasked with the sponsorship program's administration, a program in which both had direct political involvement, raises questions regarding the potential for abuse inherent in the exemption rule that allows political staff priority access to employment within the federal government after three years of political service. Why did those responsible for maintaining the integrity of this system not prevent appointments that, while arguably within the rules governing such transitions, clearly failed the "sniff test" at every level? Resurrected by these events is the long-standing debate over the propriety of this "exemption" from the merit-based competition process required of other aspiring civil servants. To what extent does this practice lead to the politicization of the bureaucracy? Denis Saint-Martin's paper "L'Affair Groupaction: un cas de politisation de la Fonction publique federale?" offers some observations on this subject and his thesis will be examined against the opinions of other political observers.

The broad number of issues raised by an examination of the role of exempt staff required that a degree of triage be exercised in determining what aspects of the function would be explored. Consequently, the paper remains a general overview and may not do justice to all potential subjects or questions suggested by the topic. Two areas that I have strategically avoided, each being worthy of a lengthy dissertation in their own right, are the workings of the exempt staff in the Prime Minister's Office (as distinct from those in other ministerial offices) and a detailed exploration of each of the specific functions within a minister's office—again fodder for future in-depth exploration and an area largely overlooked in the academic literature, with the exception of a few useful, albeit dated, examinations of the role of Executive Assistants/Chiefs of Staff. More universal and pressing issues, suggested by the terms of reference for this paper, will, I hope, be adequately and constructively addressed.

1.3

Legacy of the Dorion Report

The first comprehensive assessment of the role of the minister's staff shares with this paper a common provenance, that greatest of all academic catalysts, the political scandal. On November 24, 1964, Chief Justice Frederic Dorion of the Superior Court of Quebec was appointed to a Special Public Inquiry to investigate allegations raised in the House of Commons regarding the impropriety of actions taken by ministerial staff in the Pearson administration. In what became widely known as the "Rivard Affair", it was alleged that the Executive Assistants to the Ministers of Immigration and Justice had used bribery and intimidation in an attempt to block the extradition to the U.S. of an alleged heroin smuggler by the name of Lucien Rivard, a man believed to have close ties to the Quebec wing of the Liberal party.[7]

Similarities between the political fallout of this historic scandal and current events arising from the Sponsorship Inquiry were highlighted in the spring of 2005 in an article by historian Peter C. Newman:

> In the brooding winter of 1964…Ottawa was shaken by a series of allegations and revelations of corruption in high places that

> involved stunning parallels to the scandal currently rocking the Martin government. Then, as now, a ...Prime Minister who headed a minority government found his party accused of crimes and misdemeanours that robbed him of the moral right to rule. Then, as now, the U-turn ethics of its Quebec wing appeared to condemn the Liberal party to the ashcan of history. Then as now, a judicial inquiry was held to examine the dirty laundry...[3]

What Newman stopped short of pointing out is that then, as now, the activities of exempt staff may turn out to have played a pivotal role in the events in question and that then, as now, the aura of their involvement has raised questions over the appropriate role and function of this relatively unexamined and unfettered level of government machinery. While at the time of this writing, the Sponsorship Inquiry has yet to draw its conclusions, the final report of Justice Dorion presented a scathing indictment of the conduct of the exempt staff members involved, as well as the political masters that shielded them, resulting in the resignation of the Minister of Justice and the eventual conviction of his former Executive Assistant.

2 Theoretic Underpinnings and a Brief Evolutionary History of the Statutory Orphans

2.1

Mallory's Musings: An Early Perspective

In the wake of the revelations of the Rivard Affair, Professor J. R. Mallory observed that among the Dorion Report's many contributions, it served to "illuminate certain facets of government which have hitherto escaped the attention of scholars."[4] In redressing this oversight, it was his assessment that, contrary to what some scholars had lauded as the Canadian constitutional system's success in developing a "clear-cut dividing line drawn between the politician and the administrator,"[5] there was, in fact, embedded within the machinery of government in

Canada, "an intermediate class of persons in the Minister's Office, who are political rather than bureaucratic in their functions, appointed rather than elected, and who operate in an area which strict constitutional theory does not recognize as existing."[6] The presence of this emerging group of operatives in the Minister's lair was, in Mallory's estimation, inappropriate to the Westminster model of democracy.

> It is clearly undesirable that a considerable number of persons not a part of the civil service should be interposed between a Minister and his department. They lack the training and professional standards of the public service: it may even be the peculiar nature of the appointment means they escape the security screening which is an unpleasant accompaniment of most candidatures for responsible posts in the public service. Not only do these functionaries wield great power because they control access to the Minister and can speak in his name, but they may wield this power with ludicrous ineptitude and in ways that are clearly tainted with political motives.[7]

There was, he feared, "a danger inherent in having such untrained people, lacking the career motives and professional standards of the civil service, in positions of both influence and power."[8] In his opinion, the duties to be performed by those in a Minister's office should be strictly limited to the writing of the Minister's speeches, the preparation and distribution of press releases and "such mundane matters as supporting the Minister's public image by cultivating the goodwill of the press gallery…[9] He also conceded the need for a gatekeeper "to act as a buffer between a busy Minister and his constituents and political followers.[10] Beyond that, any role played by the Minister's staff, particularly with respect to policy or program development, was an inappropriate incursion into the realm rightly held by the public service.

2.2

Recollections of the Pearson Era Exempt Staff

Mallory's concern over the newly founded and unfettered influence being wielded by ministers' advisors in the 1960s is given credence by the recollections of former ministerial staff of that day. A recent interview with Harold (Sonny) Gordon,[11] Executive Assistant (EA) to the late Maurice Sauvé, former Minister for Forestry and Rural Development, corroborates many of Mallory's observations on the evolving role of ministerial staff and identifies this Pearson administration as the political era that cast the mould for the contemporary political office. Gordon's profile at the time was not unlike many one might find on the Hill today. His hiring was informal, the result of a word-of-mouth tip from a friend, Peter White, who was vacating the post at that time. Gordon has no recollection of having received any specific training or written instruction of any kind regarding what he could or could not do in his new job. As a young urban Montrealer trailing a fresh off-the-press law degree, his practical expertise in matters related to the forestry industry or rural development was virtually non-existent. Nonetheless, at the age of 27, Gordon felt he "ostensibly, had the authority to represent the Minister" and to speak on his behalf with the public servants with whom he regularly met. Apropos to Mallory's concern over the lax security clearance given political staff at the time, Gordon remembers being active in the job, with access to all the most confidential and politically sensitive documents of the day, at least six to eight weeks prior to receiving any security check.

The variety of duties Gordon undertook as EA ran a broad gamut from speechwriting, to representing the Minister's office on departmental committees, organizing trips and accompanying the Minister on those travels, dealing with the press and certainly "putting in a good word" for constituents with the appropriate people when the need arose. In his words, he "knew what the Minister wanted done" and went about doing it. His relationship with Maurice Sauvé was quite informal, with meetings taking place at 8:00 a.m. three or four times a week to bring Sauvé up to date on what was happening within the department, his riding or the corridors of Parliament and to receive any instructions the Minister might have for him. According to Gordon, the exempt staff was "a little club" that met on a weekly basis, socialized together, and generally co-operated in ensuring the smooth running of the political machine. "Some could be trusted," recalls Gordon, "and some couldn't."

This Pearson government saw, for perhaps the first time in Canada, the emergence of the EAs as a political force in their own right. These were highly partisan, passionate young men, infused with the rebellious spirit of the times, anxious to champion the most progressive of the social policies, and in some cases, as the Rivard Affair demonstrated, willing to do whatever it took to ensure the electoral success of the Liberal party. Those days, Gordon recalls, were a "heady experience" with many of his EA colleagues such as Bill Leigh, Bill Neville and Duncan Edwards becoming high profile personalities on Parliament Hill in their own right. It was not uncommon for political staff to take a lead role in many of the governments most controversial and innovative policy initiatives, among them such memorable programs as the unification of the armed forces and the creation of the Company of Young Canadians. So established had many of these young politicos become on the Ottawa scene that it was occasionally the EAs, rather than their Ministers, who would make announcements to the press and be the focus of media scrums. Jerry Yanover, another 1960s political staffer and one who has continued to work in Liberal Ministers' offices to this day, likewise recalls the lofty profile that the EAs in the Pearson administration had assumed. "Pearson aides had become major characters in their own right," said Yanover, "they were "celebrities" and many politicians and officials wanted to rein them in."[12]

2.3

A Break with the Past

The high profile characteristic of this cohort of Pearson era exempt staff was in many ways a departure from the traditional role that had been played by Ministers' staff up to that time. Mitchell Sharp, a former senior public servant and prominent Cabinet Minister in successive Liberal governments, recalls that in his days as a bureaucrat in the 1940s and 50s, the Minister's staff were quite limited.

> Ilsley[13] was content with a secretary and assistant secretary and a messenger, Abbott[14] had a male executive assistant and as well as secretarial staff and a messenger, Howe had a male executive assistant, a couple of secretaries and a messenger. Even Prime Ministers King and St. Laurent had only a handful of people in their offices, nearly all of whom (like Pickersgill, who served both King and St. Laurent) had originally been selected by the Public Service Commission for departmental jobs. In those days, there were no constituency offices or constituency staff paid by the government.[15]

As a deputy minister in the 1940s, Sharp does not remember exempt staff playing any role in the ministerial-mandarin relationship: "...the ministers I served dealt directly with their deputy ministers and other senior civil servants. Politically appointed ministerial assistants did not intervene between Ilsley, Abbott, Howe, Churchill and me in the decision-making process..."[16] Professor J. R. Mallory had also noted this departure from the traditionally held and largely benign role of earlier ministerial staff, his contempt for the emergence of a more politically active and policy-driven exempt staff barely concealed when he wrote:

> Within the last decade or so the Minister's private office has been inflated beyond recognition. The old and honourable title of "private secretary", which no longer seems to convey an appropriate image,

has been replaced by the term" executive assistant". The public treasury now supports an office establishment, which includes special assistants and administrative assistants, whose various duties include speech-writing, improving the Minister's contacts with the press gallery, and keeping the Minister in the public eye and sufficiently responsive to the politically importunate. Ministers have even maintained offices in their constituencies, staffed by this new kind of public servant.[17]

2.4

Emerging Perspectives: The New Ministerial Office

This opinion of Mallory's that the increased involvement of the Minister's staff in the machinery of government represented an abrogation of democratic government had its critics, among them, Paul Tellier, a man who would later become the Clerk of the Privy Council and himself an exempt staffer in the 1960s. In a paper published a year after Mallory's, Tellier argued that rather than an incursion into the territory rightly held by the public service, political staff served an important and necessary function, one that should continue to be enhanced rather than curtailed as Mallory's writings suggested. According to Tellier, the policy capacity of a Minister's staff should evolve along the lines of the American model, affording Ministers the benefit and assistance of loyal collaborators whom they had personally chosen from outside of the public service and whose allegiance would be to them alone. These assistants would help reduce the Minister's ever-increasing workload and provide a perspective on policy options that would be independent of that offered up by the bureaucracy. To fulfill these roles to their best advantage, he suggested that Ministers should look to the best and brightest in the country's universities, research labs, industries and media and select individuals based on their technical expertise in the policy areas preoccupying their respective ministries rather than relying on partisan political affiliation.[18] In an adage reminiscent of the times, he warned that these advisory positions should not be trusted to anyone over the age of 40. As Tellier, himself in his twenties at the time, explained, "Ce plafond de quarante ans pourra sembler arbitraire à certains mais la nature humaine étant ce qu'elle est, après cet âge il semble plus difficile à la plupart des individus de ramer à contre-courant et de remettre systématiquement en question l'orde établi."[19] The dynamic created between these two levels of policy input, young and innovative on the one hand, seasoned and bureaucratic on the other, would offer Ministers a more robust set of options than might otherwise be served up by what was increasingly viewed as a powerful and self-serving bureaucracy.This in turn would lead to better and more informed political decision-making and therefore better governance.

Donald Savoie's observations on this period in his book *Breaking the Bargain* seem to add credence toTellier's point on the growing need for ministers to balance the power of the bureaucracy with more objective and independent advice. Writes Savoie, "Indeed, by the 1970s, many politicians and their advisors claimed that permanent public servants were running governments and that their apparent deference to politicians was pure pretense."[20] The genesis of this development and the aura of mistrust it engendered, Savoie explains, lay in the expansion and proliferation of policy areas in which government now found itself involved. "As formulating public policy and making government decisions became more complex, political masters … became more dependent on the advice of expert or career public servants. As they became more dependent on public servants, they probably became suspicious of their growing influence. Some politicians began in effect to look at the public service as a kind of entrenched aristocracy within a democracy."[21]

The experience of Ministers in Great Britain certainly presented a cautionary tale of what can happen should Cabinet be subjugated to a dominant and self-serving public service. The popular television series, "Yes, Minister", which one former Deputy Minister admitted was used in the training of aspiring Canadian mandarins,[22] clearly demonstrates the pattern that can be entrenched when Cabinet Ministers find themselves wholly dependent on the bureaucracy for policy advice. In his book, *Whitehall*, Peter Hennessy recounts what he finds to be "the best description"[23] of the British situation, as described by Lord Annan:

> The mandarins are the permanent secretaries who are at the head of each Ministry. The spies are the young civil servants who are the private secretaries to the Cabinet Ministers. Every meeting a minister has is attended by his private secretary, who logs it; every conversation he makes on the phone is recorded; every appointment he makes in Whitehall is monitored. If a Secretary of State starts to throw his weight about, or adopts a policy the civil servants regard as dangerous, the warning bells ring, and in an emergency the top civil servant of all, the Secretary to the Cabinet, will intervene with the Prime Minister. If a Minister brings a political advisor into his ministry and the advisor does not toe the line, the mandarins cut off his information: he will appear at a meeting and discover that his rivals possess certain important memoranda that mysteriously have never reached his desk. He therefore appears to be badly briefed and loses credibility. Each Tuesday morning before the mandarins meet in the Cabinet Offices (in fact, its Wednesday Morning) they are briefed by their spies to hear what is cooking. If you try to bend a Minister's ear in his office, what you say will be round the Civil Service within forty-eight hours: the only way is to catch him at dinner in the evening when his attendant nurse from the mental clinic, his private secretary, is no longer observing his patient.[24]

While the Canadian experience may never have achieved these spectacular heights of bureaucratic control, there was nonetheless a sense in the 1970s and 80s that increasingly, Ministers were becoming nothing more than a rubber stamp on the bureaucracy's policy ambitions. The growing size and complexity of public administration during this period and the increasing demands placed on a Minister's time precluded the intimate, collegial relationships that had characterized political-bureaucratic interface in the early days of government in Canada, and Ministers were feeling increasingly alienated and emasculated by the sophistication of the policy process being carried out below them. As a Minister in the Trudeau Government revealed, "I found it very difficult to communicate, to seek out advice when I needed it. I felt the ritual of the paper work—the chain of command—made it virtually impossible to get the kind of information I needed when I needed it and I felt very helpless."[35] No wonder then, the emergence of a more robust exempt staff: young, energetic operatives immediately present and available to provide an external, politically-informed response to a Minister's need for information and to act as their proxy when need arose. Confidantes, advisors, comrades-in-arms in the political battles to get and retain power, these politically passionate staffers were the ones that were there at the Minister's side come the day's end, the ones who shared in the everyday frustrations, pressures, strategies, crises and victories that were the lifeblood of Parliament, and not surprisingly, the mandarins eyed them with not a little resentment and suspicion.

It was therefore not surprising that official Ottawa began to resound with the grumblings of senior officials displeased by this new layer of authority being wedged between themselves and the Minister and resentful of the second opinions being rendered on the policy recommendations forwarded by the department for ministerial approval. Many, like Mallory, were suspicious of the capacity of political staff to provide the Minister with sound policy advice. Research by Donald Savoie in the mid 1980s seemed to substantiate the feelings of many in the bureaucracy that the majority of these young political operatives had neither the experience or education nor expertise to match the seasoned, technical, high level advice being offered up by the bureaucracy:

> The survey revealed that two ministerial assistants had obtained two university degrees, eleven had one degree and seven had no university degree…Ten of the twenty assistants surveyed had either no work experience or had worked in another minister's office…If one views educational background and work experience as important criteria is assessing the competence of employees, as does the Canadian public service, then the competence of ministers' staff is lacking… It is an exception to see anyone qualifying for middle level positions in policy, planning or research units in the federal public service without having a postgraduate degree. In addition, before qualifying for these positions, officials usually have several years work experience to their credit…Even at junior levels in policy and research units, officials only qualify for permanent positions provided they have reached a certain educational level…[76]

Whatever the legitimacy of their concerns over the youth and competence of ministerial assistants, the negative reaction of the public service to this incursion into their traditional sphere of influence followed a pattern of classic political theory that dates back to the days of Max Weber.[77] As Weber explained in his day, "the bureaucracy, out of pure power instinct, fights every attempt of the parliament to gain knowledge by means of its own experts or from interest groups. Bureaucracy naturally welcomes a poorly informed and hence a powerless parliament."[78]

And thus the stage was set for a dynamic of bureaucratic/exempt staff interface that has been played out in various scenes in Ottawa ever since, a battle of two opposing philosophies framed on the one hand by Mallory, the champion of the emasculated Westminster model of the ministerial office, and Tellier on the other, whose approach would see Ministers bulwarked by a hand-picked cadre of young operatives ready and willing to ensure that the machinery of government marches to the tune of the democratically elected drummer.

2.5

Reining In the Assistants

The first round, as Jerry Yanover tells it, went to Michael Pitfield, Clerk of the Privy Council to Prime Minister Trudeau. Feeling that too long a stint on the Hill lay at the source of the growing influence of political staff, he recommended to Prime Minister Trudeau that the government intentionally stop raising the salaries of exempt staff—at the time about $15,000 a year, roughly equivalent to that of a high school principal—in an effort to discourage these young assistants from staying around too long. "Come in, learn and get out," Yanover recalls being told, "here are the doors this will open for you after."[59]

Perhaps spooked by the Rivard affair and wary themselves of the dominant profile achieved by some of the Pearson era staff, the Trudeau government acquiesced, even as the increasing demands on a Minister's time and the growing sophistication of government and media during the 70s and 80s conspired to support an exponential increase in the number of exempt staff required to support the Ministers. The $78,000 annual budget allotted Ministers in 1968 ballooned to $175,000 ten years later,[60] albeit now divided among 10 to 12 exempt staff and often supplemented by departmental people seconded to the Minister's office. Ironically, while the low wages may have encouraged some to cut short their time on the Hill, it also ensured that Ministers in the Trudeau cabinet were unable to follow through on Tellier's concept and compete with the private sector for the best and brightest professional talent available to enhance their in-house policy capacity.

Good people did come to the Hill in the 70s and 80s, but in general, the staffs consisted of recent and highly partisan graduates cutting their teeth in the world of *realpolitik* and slightly punch drunk with their newly found authority. Then as now, they were playing a game in which there were few set rules, high political stakes and virtually no safety net. The "club" atmosphere recalled by Sonny Gordon in the 60s was still very much in evidence and enhanced by both the advent of women into this cadre of political advisors—about half were women by the late 70s[31] —and the institution of such events as "Wonderful Wednesdays," a weekly booze and food fest hosted in the Railway Room on Parliament Hill by a rotation of Cabinet Ministers. The Press Club on Wellington Street provided an alternate watering hole other nights of the week, and many staffers regularly migrated across the street after 6:00 p.m. to have a few drinks, carry on business or rub elbows with the press. Bonded by their strong partisan loyalty and affiliations, they were each other's family, heady with their own good fortune, awed by the charisma of their political leader, and for some, alternately drunk on booze and power.[32]

2.6

Up Where They Belong—A New Vision of Exempt Staff

The sweeping victory of the Mulroney Government in 1984 heralded a substantial change in the culture and trappings of political staff. If politicians' fear of the power of the bureaucracy in the 1970s and early 80s had tipped the balance in favour of a stronger political office, those suspicions reached new heights with the arrival of the Tory government. They were concerned, as one former Mulroney-era Special Assistant recalls, that the new government might find itself "in office but not in power." Two factors fuelled the new government's heightened distrust of the public service: one, the length of time the bureaucracy had served only a Liberal government; and two, the fact that Brian Mulroney had never sat at a Cabinet table and would therefore be more vulnerable to the direction given by his bureaucratic advisors. The incoming Prime Minister was encouraged by his top political strategists to bolster his Ministers with strong political staff, senior people who would be able to stand up to the mandarins "eye-to-eye and belly-button to belly-button."[33] As Hugh Segal, a former Mulroney Chief of Staff recalls, "Mazankowski, Tom D'Aquino and others decided that enhancing the political staff was the best way to countervail an ossified public service."[44] The pay scale for ministerial staff was bolstered significantly and the title of "Executive Assistant" changed to "Chief of Staff" as a clear message to the bureaucracy that a new wind was sweeping through the political corridors. As Donald Savoie explains, "Mulroney's decision had one purpose—to check permanent officials' influence on policy. The Chief of Staff was an Assistant Deputy Minister and, according to government press releases, an 'official in the American style.'"[45]

Loretta O'Connor, in her 1990 study of the role of chiefs of staff, described this new position as follows:

> The chief of staff is, first and foremost, the senior political advisor to the minister. He or she is also the director of operations and controller for the minister's office. The chief of staff must provide leadership and coherence to the operations of the minister's office, and should bring sound knowledge to both governmental decision-making and the policy process. A key role of the chief of staff is to ensure that ministerial directives are carried out within the department. In this way, the chief of staff assists in increasing ministerial control and accountability.[46]

If resentment over the increasing presence and prominence of ministerial staff was cause for bureaucratic concern during the Liberal era, the changes suggested by the new Mulroney administration quickly ratcheted up that apprehension by several notches. Former Deputy Minister Arthur Kroeger recalls the insecurity excited by the announcement of the new structure: "When Mulroney arrived there was lots of fear in the bureaucracy over the increased power of the Chief of Staff displacing the DMs.[47] Indeed, as Donald Savoie recounts, the furor was such that Prime Minister Mulroney had to resist pressure from his advisors to move further towards an American style ministerial office. He quotes one senior Mulroney Minister admitting at the time that "…this kind of thinking so upsets the bureaucrats that he (Mulroney) feels he cannot go much further than he has. Appointing chiefs of staff was seen in many quarters as a revolutionary act—no, an act of high treason."[38]

And who were these new staffers hired to stare down the bureaucracy? Savoie recounts that the "transition team had put together a list of potential candidates for ministers to pick from as they were appointed."[39] And while no doubt legitimate attempts were made, particularly through the significant increase in pay, to attract a more seasoned and professional group of individuals, the reality as one former PCO mandarin recalls was, "there were traces of the old style with Mulroney…old constituency war horses would show up on a Minister's staff straight out of the riding. They played a variety of roles and had a variety of backgrounds…" [40]

To its credit, the new regime made a solid attempt to set its ministerial assistants on the right path. One former Deputy Minister recalls, "Mulroney had them all up to the staff college in Cornwall and had a combination of ex-politicians like Dalton Camp and some senior DMs to talk to them—kind of a three day weekend about six weeks after the election. They had a whole curriculum explaining all the theory of how things should work."[41] Did this orientation have the desired effect? Not according to this observer: "The problem was they were still in the euphoria of winning and the little darlings weren't listening—nobody was listening. They came back and were still acting like little puppies going around chewing on everything and peeing on the carpet to identify their turf…"

Another former Deputy, Arthur Kroeger, offers perhaps the best summary of the impact of the change imposed by the creation of this new exalted chief of staff position. Looking back at that period with the benefit of hindsight, he concludes that, in the end, "the real difference between a Trudeau EA and a Mulroney Chief of Staff was about $15,000."

2.7

Everything Old Is New Again: The Chrétien - Martin Years

Not surprisingly, the return of the Chrétien Liberals in early 1993 saw a reversion, at least in title and remuneration, to the spirit of the Trudeau years. The senior position in the Minister's office, save the Prime Minister's, was once again "Executive Assistant." Salaries were again curtailed. Tony Macerollo, an Executive Assistant of that time, admits that when it came to working with the new exempt staff, by that time, "the bureaucracy was accustomed to the structure and style of the Mulroney years. They were relieved to see less (minister's) staff, but they had more work under the Chrétien administration. Some functions were returned to the bureaucracy."[42] Likewise, Savoie's investigations reveal that very little in the role of exempt staff changed as a result of the reversion.

> Executive Assistants to Chrétien's ministers have not enjoyed the same salary levels as had the chiefs of staff in Mulroney's government, but like their predecessors, they challenged the views of the career officials. My consultations with career officials in Ottawa suggest that relations between ministerial—exempt staff and career officials changed after Chrétien came to power, but only at the margins. Some Executive Assistants, like some chiefs of staff worked well with career officials, while others did not. Most tried to influence policy decisions; some were successful, some not.[43]

With the retirement of Prime Minister Chrétien in 2004, a change in the name of the senior exempt staff was again used to signal the advent of a new regime by the incoming Martin administration. Today, "Chiefs of Staff" once more head up ministerial offices and their status has been elevated to the level of an ADM (EX-04) with a maximum salary level of $147,300 a year, a difference of $32,000 compared to the ancien régime. The pay increase brought the usual cries of derision from opposition MPs, who noted that increase now meant senior ministerial aides would be earning $12,000 more than members of Parliament. Responding to the criticism with a rationale recycled from the Mulroney era, Fisheries Minister Gerald Reagan said the raises would help him and other Ministers appoint more capable senior staff as ministerial aides.[44] Mario Lague, a spokesperson for the PMO, further explained the salary increase by noting that ministerial staff would now be expected to pay much more attention to the work of Committees under the Martin government and that Ministers' offices "are being asked to do much more, dealing with parliamentary secretaries, dealing with parliamentarians ...the whole role is enhanced..."[45]

3 Contemporary Perspective: Issues of Today's Statutory Orphans

It is useful to recall at the outset of any discussion of ministerial personnel today that we are examining a role that, as Mallory astutely reminds us, "operates in an area which strict constitutional theory does not recognize as existing."[46] It is within, and arguably, because of the vacuum created by this "absence of definitive constitutional theory"[47] that exempt staff have, over time, operated at the apex of power with very little by way of law or convention to govern their activities, inform their relationships with other levels of government or determine what degree of influence or power they can legitimately wield. Being neither fish nor fowl, this "intermediate class of persons"[48] freefalls between the cracks in the rules governing both sides of the political/bureaucratic divide; exempt, on the one hand, from the conventions and statutes that control the activities of civil servants but likewise unimpeded on the other by the oaths and obligations of ministerial responsibility and accountability to which their elected masters are bound. With no manuals, few mentors, and little margin for error, these young political operatives enter a kind of Alice-in-Wonderland existence that provides them few signposts to provide proper direction down the often-divergent paths of governmental propriety and political expediency.

3.1

Hiring—An Unconventional Exercise

The hiring of staff for a Minister's office remains today, as it has traditionally been, a somewhat mysterious confluence of political patronage, personal contact, old-fashioned nepotism and serendipity. That this occurs in such exalted political circles is perhaps not surprising given that a newly minted Cabinet Minister, many still in shock from their own ascension into Cabinet,[49] might look long and hard for a list of required qualifications to guide them in determining the profile of an appropriate candidate for their personal staff. The only piece of binding legislation governing the hiring of exempt staff is found in Section 39(1) of the *Public Service Employment Act*, which states simply: "A Minister may appoint his Executive Assistant and other persons required in his office."[50] Treasury Board continues to set aside budgets for the hiring of ministerial staff, currently pegged at $828,000 per year, with an additional $480,000 for the secondment of departmental personnel. Ministers of State are allotted $305,000 for personal staff and $190,000 for departmental secondments respectively.[51] Effective July 2004, Cabinet Ministers are authorized to pay their chiefs of staff, as mentioned earlier, at an EX-04 level of up to $147,300 annually (equivalent to that of an Assistant Deputy Minister), their senior policy advisors, directors of communications and directors of Parliamentary affairs at an EX-02 level to a maximum of $114,500, policy advisors at an AS-8 level of up to $87,370, senior special assistants at an AS-07 level of $82,196, and special assistants in communications, parliamentary affairs and at the regional desks at an AS-05 level of up to $66,287. Secretaries of State are eligible to offer their chiefs of staff a somewhat more modest EX-02 level salary of up to $114,500, senior special assistants an AS-07 equivalent up to $82,196 and special assistants as AS-05s at up to $66,287.[52] Exact salaries are determined at the Minister's discretion and can be set at any level up to the maximum established for each position. It should also be noted that exempt staff, once hired, enjoy all of the same benefits as public service employees with regard to health, dental, unemployment and disability insurance, pension plans, annual leave, sick leave and death benefits.

So how do the "little darlings" find their way to Parliament Hill? While one Liberal EA admitted to getting his start as a constituency assistant through an advertisement posted on a university employment board,[53] the staffing of Ministers' offices, as noted above, is rarely carried out in so conventional a manner. Political loyalty and partisan affiliation being key criteria for the job, ministerial staff are often recruited from the youth wing of the party and university political clubs (often referred to as "Growing Grits" or "Tiny Tories"), organizations specifically designed to attract and groom the young party faithful, many of whom volunteer their time and considerable energies at leadership conventions and election time. If the campaign is successful, shoulders are tapped, corridor references confirmed and positions filled.

Although seasoned political experts will always advise Ministers against "hiring your campaign manager," every new regime inevitably arrives with a few of these loyalists in tow. Some of the challenges they face in moving into government are summed up well in the following critique:

> The problem with having campaign people come into the government is they remain to be tested on their ability to govern. Those who work in campaigns think in a short time span, see the world in black and white, and have a sense of attack. While fit for campaigning, these qualities are not necessarily what you want to emphasize in governing…when you govern, you have to figure out how to build a coalition and work with others because, in fact, in our system power is so widely distributed and fragmented that that's the only way you can effectively govern. Those are not necessarily the same set of skills that get illuminated during the course of an election.[54]

In addition to these former campaign allies, the number of daughters, sons, nieces, nephews and cousins of members of Parliament, their friends or their financial supporters who have turned up over the years to cut their teeth as exempt staff on Parliament Hill cannot be discounted. While many of these are competent and qualified individuals—John Crosbie attributes the highly successful Canadian initiative to create the G-8 to his former Chief of Staff and cousin, Bill Crosbie—many have only nepotism to recommend them. Some well-connected political families can almost boast a dynasty. As one media consultant who has been a Hill observer for the past thirty years commented, "I can't ever remember a Liberal government when there hasn't been a (Winnipeg) Richardson working on the Hill."[55]

Indeed, a stint in a Minister's office is often considered advisable, if not *de rigueur* for certain young members of the Canadian Establishment, a sort of real world finishing school designed to teach how power works prior to the pursuit of their real life ambitions. Alternatively, a job in a Minister's office may also serve as a social lever for those "not to the Manor born." As a 1994 study of Chiefs of Staff by Micheline Plasse noted, "…it is interesting nonetheless to study on the basis of the 'father's occupation' the extent to which Ministers' offices are an entry point for raising one's social standing…" The data shows that nearly half the Chiefs of Staff have ties to the world of business, finance or economics. The others come from blue-collar backgrounds, from commerce, or from the "liberal" professions. The representation of working and agricultural classes (6 of 20) demonstrates again a certain degree of democratization and accessibility for those coming from the lower classes.[56]

Another of the more common means of access to work in a Minister's office is through acquaintance with those already there. Current staffers will often know when openings arise and advise their friends of the opportunity and conversely, the Minister of their friends. Jerry Yanover recalls, "there was one instance when a bright fellow was brought in from Oxford. It turned out the office needed a French assistant shortly thereafter, and this fellow said he had a classmate at Oxford who was interested in politics. That fellow's name: Pierre Pettigrew."

As Pettigrew's career attests, seasoned exempt staff does provide a ready pool of political candidates, but the converse is also true. Defeated candidates are often "rewarded" with a political appointment to a Minister's staff—albeit as somewhat of a consolation prize. In this way, the Minister's office serves a dual purpose. In addition to political support for the incumbent, it operates as a holding tank for future candidates, keeping them close to the centre, feeling "wanted" and readily primed and available for recycling in the next election. Defeated Quebec candidates have the added ability of speaking French and knowledge of the political complexion of that province and are often the answer to filling a difficult staff position, especially for Ministers from unilingual Anglophone ridings.[17] As former EA Fred Drummie notes, "Look into any Minister's office and you will inevitably find a defeated candidate covering off the Quebec desk as the regional special assistant."

Although the hiring of ministerial staff may deviate from standard human resource practices, many Ministers do, according to one source, undertake a solid round of interviews in an effort to establish among their staff the right balance of regional coverage, expertise, gender, ethnicity and language.[18] The application of such rigour becomes increasingly possible the further into a government's mandate one goes, when the Minister's political debts have, to some degree, been paid off, the incompetents weeded out and the Chief of Staff more established and familiar with staffing requirements.

With the advent of the more generous salaries introduced by the Mulroney government in the 1980s, Ministers are now occasionally able to attract more specialized and experienced talent. Several Prime Ministers and Ministers have plumbed the depths of the parliamentary press pool in an effort to ensure that their public image is entrusted into the hands of an experienced scribe. Where once a foray into the partisan world would have ended a journalist's career, it is not unheard of nowadays for some to return to their former profession after a stint on the Hill, their political neutrality exchanged for the greater insight and experience acquired on the "inside".

Similarly, Ministers offices are now replete with departmental personnel, individuals seconded from the bureaucracy to act as a liaison and conduit between the department and the ministerial office. As one former PCO mandarin observed, "there has been an exempt staff trend of pulling people into the ministerial office from the departments and sending them back down. It used to be that if you did that, your public service career would be over—once you crossed that line you couldn't come back. What's devolved is that we have not maintained as clear a distinction as there used to be."[59] While critics argue that this practise, over time, will inevitably lead to an incremental politicization of the bureaucracy, the thought being that like virginity, political neutrality can never be fully restored, others are convinced that such cross-pollination is beneficial and can lead to a better-informed and small "p" politically-astute bureaucracy. Whatever the merits of the debate, there is unquestionably more tolerance today for some degree of moving back and forth between the partisan and non-partisan worlds of the Minister's office and the public service, media or private sector. As to whether this constitutes a positive trend or an abrogation of professional ethics, it does ensure that Ministers might be advised and served by a somewhat more worldly and seasoned cadre of assistants. As one Deputy Minister commented, "Finally, we'll have someone who won't lose the Minister's papers, who will be competent, who will have sufficient experience, who will be more intelligent, and with whom we can finally speak as adults…"[60]

There is also more recent evidence of a slightly different career pattern emerging on the Hill than would have been observed twenty years ago. More and more, candidates for the top posts of Chief of Staff and the directors of policy, communications and parliamentary affairs are being recruited from among those who have already gained some Hill experience working in either a private member's office or in a Liberal or Conservative caucus research branch. This trend acknowledges both the increased importance and responsibilities that are now vested in these senior exempt staff positions as well as the availability of more seasoned personnel thanks to the expanded budgets offered to Members of Parliament and research bureaus.[61] It has also been noted that the task of finding seasoned staff becomes progressively easier the deeper one goes into the government's mandate, when promotion from within an office presents a logical solution to ensuring the top jobs are filled by knowledgeable and experienced people:

> ...after several years in power, ministers have a pool of potential candidates in their offices. Internal recruitment has certain advantages: avoiding crises of succession, appointing a more experienced candidate, rewarding a candidate with a better understanding of the workings of government and the government apparatus itself, and above all, appointing an individual with whom the minister has already worked. The period of adaptation and adjustment...will consequently be reduced.[62]

A more recent phenomena in the quest for experienced chiefs and directors is the secondment of senior or retired managers from the public service to fill these top posts, as was the case with Scott Brison and Doug Young in their respective choices of chiefs of staff and Barbara McDougall's appointment of Scott Mullen as her Director of Communications back in the Mulroney era. Beyond that, at least two Ministers in the Martin government, Joe Volpe and Ken Dryden, looked to a senior member of the volunteer sector to take over the top posts in their offices—the non-governmental organization sector being one where current exempt staff wages are competitive with those of top managers in the field.

Yet despite all the efforts and enticements made to recruit more experienced and competent personnel to these highly demanding and responsible positions, a survey of recent incumbents seems to indicate that the average age and experience of Hill workers has not increased in lockstep with the enhancements of either salary or the level of public service equivalency being offered. Many are still recruited directly out of university, and although today they might extend their term beyond the average of "slightly more than two years,"[61] noted by Blair Williams back in the mid-80s, most spend that additional time hop scotching their way up the ministerial staff hierarchy, lighting on each position for a year or two at best. While no doubt this emerging practise of a career progression within the ministerial office results in a more seasoned and by extension, competent, level of senior exempt staff, it also leads to a very high rate of turnover, with all of the performance implications associated with that mobility. On the other hand, as one former Deputy Minister pointed out, "the turnover of exempt staff continually brings in new enthusiasms. There is a happy period between the exuberant incompetence and the jaded cynicism that eventually takes over, and it is that period in between that you want to maximize."

At the end of the day, there is good reason why Ministers' offices are still staffed by the young. It is a reality divorced from both financial enticements and any need for the fearlessness required to challenge the system as identified by Tellier back in the 1960s. The simple fact is that ministerial aides are often required to work twelve hour days, sometimes seven days a week. They must be available to their Minister or, in the case of communications assistants, the media, at all hours of the day and night. They require tremendous energy, stamina and focus to cope with the often crisis-driven pace of the office, and their first priorities must be their job and their Minister. In other words, their job is their life. For all of these reasons, it is best if the incumbents come to the job with the vigour of youth and no competing pressures. Family life is rarely compatible with the hours required and stress imposed on political advisors as more than one dissolved marriage can attest. For many, the network of colleagues serves as both family and friends, leaving little time or energy for relationships beyond that group. More than one thirty-something has emerged from the frenetic existence of a Minister's office wondering how to "get a life." While some older staff do manage to maintain a precarious balance between work and family commitments, there is rarely the time or energy available to adequately satisfy the demands of both, and many seasoned staffers are conspicuously single or, if not, eventually find themselves that way again. Work in a Minister's office therefore remains largely a privilege of youth, a time when fierce political idealism, physical stamina, and personal independence are all available in sufficient quantities to satisfy the long hours and depth of commitment demanded by life on the Hill.

3.2

The "Right" Staff: PMO Scrutiny

While the convention of ministerial discretion in the hiring of exempt staff remains enshrined in the wording of the *Public Service Employment Act*, the Prime Minister's Office (PMO) continues to have a hand in ensuring that candidates appointed to Ministers' offices carry the appropriate pedigree. As one seasoned exempt staffer explains, "the PMO has a concern that Ministers not hire unsatisfactory or inexperienced workers or ethical louts and that the appointments are politically appropriate." He concedes, however, that this PMO oversight can sometimes take on a vindictive twist, with victorious loyalists in the PMO using their authority to obstruct the hiring of their bosses' rival supporters.

This oversight by the PMO of ministerial staff appointments, while perhaps more structured and acknowledged today than in the past, is not a new phenomenon. One long time Hill observer confirmed that attempts by the PMO to have some tacit control over the hiring of exempt staff likely goes back to the days of Pearson and his main advisor, Tom Kent, and that Jim Coutts would certainly have kept on eye on hiring under Trudeau. This insider admitted that although such scrutiny does not necessarily ensure competence or prevent the hiring of party cronies, "It does nonetheless assure the PMO that the cronies that are hired will be *their cronies*."

The 1984 victory of the Mulroney government saw, perhaps, the most concerted effort of a recent administration to exert control over who would be appointed to their Ministers' staff. In light of the prominent and enhanced role they had envisioned for their newly-minted "Chiefs of Staff" and their now legendary distrust of the public service, there was much at stake in who they would choose to shoulder these elevated responsibilities. Those efforts, as Bernard Roy, former Chief of Staff to Prime Minister Mulroney, recalls, met with varying degrees of success:

> At first, The Prime Minister's Office wanted to ensure that no appointments would be made without the PMO being informed and agreeing. The PMO was quite insistent that the rule be observed in the beginning of the government's mandate, but afterward it was not consistently followed...One trick savoured by some of the ministers was to mention, en passant, to the Prime Minister after question period, for instance, that he had appointed his chief of staff. That was one way to circumvent the system...[64]

While perhaps not as respected in practise to the extent that was intended, M. Roy defends the need for some central control by the PMO over ministerial appointments. "The PMO had good reason to set that rule: to be able to exchange our mutual views about the appointment of individuals and to give our opinion about them. It was a question of central coordination. ...We also wanted to avoid situations where the minister would hire someone only because he felt politically indebted. This type of situation is fairly common."[65]

Several Liberal observers seem to echo M. Roy's sentiments, recalling the number of Ministers on their side of the House who have felt obliged to hire their former campaign managers as their EAs out of a sense of loyalty and political obligation. When these party workers arrive from the constituency, they inevitably find themselves in well over their heads, leading to unhappy outcomes for both the EA and the Minister. Tony Macerollo, EA to former Industry Minister John Manley, recalls that at the beginning of the Chrétien regime, the PMO tried to exert some control on the appointment of senior personnel, with a dual veto system imposed on the appointment of EAs and held jointly by the Minister and the PMO. In his opinion, the system worked well in that, by and large, no big mistakes were made. The only Minister to resign in that first mandate was Michel Dupuis, the Minister of Canadian Heritage. His EA was the first one to go, Macerollo remembers, escorted out of the building by security under mysterious circumstances sometime around 1994.[66]

The Chrétien regime also saw the return of some Trudeau era staffers after a hiatus of a decade or more out of office. According to Macerollo, many of them struggled with the job and most lasted only a year or two. His observation was that the culture on the Hill had changed too dramatically for their comfort. There was a new openness and transparency in government that these Trudeau era veterans were unused to and included the *Access to Information* legislation that had come into effect since they had last worked the Hill. Even the role of the beloved and much patronized Press Club had changed. It came as a surprise to them that "nobody went there to drink and leak stuff to the press any more".

3.3

Letting Go

If the hiring of exempt staff appears as a generally subjective and unregulated practise, the formal provision for the termination of their employment is equally brief: *The Public Service Employment Act* states:

> 39(2) A person who is employed in the office of a Minister ceases to be so employed thirty days after the person holding the position of such Minister ceases to hold that position."[67]

As this section clearly suggests, whatever the benefits there may be in serving in a Minister's office, job security is not among them. The jobs of ministerial staff can evaporate overnight should their Minister be shuffled out of the Cabinet or lose their seat in a federal election or by-election. What the Act fails to make clear however, is that the discretion given to Ministers in hiring also means that exempt staff can be fired at any time, with or without cause. Should staff members feel that they have been wrongly dismissed, there exists no appeal process, nor is there a union behind them to take up their cause. Ron Hallman, a former EA in the Chrétien administration, argues that any exemptions or privileges that ministerial staff might enjoy are more than outweighed by the employment rights and job security they forego when they accept these political positions. "A Minister's staff can be fired completely without cause at any time", he says, "nowhere else in the country can you do that."

While some Ministers have been notorious for firing staff as a result of a bad day in Question Period and other staff have been shown the door for such offences as padding expenses or sexual harassment, more commonly it is political misfortune—an electoral defeat or, more rarely, the resignation or defection of a Minister—that accounts for a premature departure. Whatever the circumstances, Ministers have the authority to pay the departing staff member a severance package equivalent to up to six months pay. Particularly in the case of electoral defeat, Ministers will often use their contacts and influence to ensure that their personal staff members all have a soft landing into appropriate positions elsewhere. While the increased size of today's staffs may make this convention more difficult to respect than in years gone by, it is still considered a reasonable expectation for the Minister's closest allies in return for the long hours and personal loyalty that has been rendered the incumbent during their days in power.

3.4

Role and Attributes of Ministerial Staff

PCO's *Governing Responsibly: A Guide for Ministers and Ministers of State* (2004) describes the role of the Minister's office as follows:

> The purpose of establishing a Minister's office is to provide Ministers with advisers and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the Public Service. Consequently, they contribute a particular expertise or point of view that the Public Service cannot provide.”[8]

This PCO directive makes it clear that ministerial staff members are hired, first and foremost, for their political acumen. Since the 1960s, where the EA carried out a wide diversity of functions related to “advice and support” primarily by himself, the scope and range of these political duties have expanded considerably resulting in a larger, more specialized and hierarchical office structure. The ministerial office of today contains a Chief of Staff and Directors of Policy, Communications and Legislative Affairs respectively, each supported by one or more Specials Assistants, several Regional Assistants, and a Constituency Assistant housed in the riding.

Treasury Board, in its own *Guidelines for Ministers' Offices*, has developed an outline of duties attached to each of these positions. For example, it has determined that the Chief of Staff (EX-04):

- Is the most senior political advisor to the minister;
- Is responsible for the overall management of the minister's office, including managing the office budget and staff;

- Is responsible for developing and implementing strategic plans in order to assist in delivering the Department's and Minister's mandate;
- Is responsible, on behalf of the Minister, for liaising with Senior Departmental Officials in order to ensure a positive working relationship between the Minister and the public service;
- Must ensure that the Minister is properly briefed and advised on all issues that relate to the Government's mandate and the Department's objectives; and,
- Must liaise, on behalf of the Minister, with the Prime Minister's Office and other Ministers' Chiefs of Staff in order to address government-wide issues."[69]

Similar descriptions can be found for each Director and Special Assistant position. Within the context of their disciplines, each is directed to "advise and brief the Minister…consult with PMO…cooperate with other Ministerial offices" and, of course, "liaise with senior department officials".

It is interesting to note that there is no explicit expectation or suggestion in the Treasury Board directive that contact between the ministerial staff and the department be conducted primarily through the Deputy Minister, as is suggested by the Privy Council guidelines. Whether this omission was intentional, accepting that contact with public servants would flow naturally from these prescribed functions at whatever level of contact was the most appropriate, or was omitted simply as being understood to occur through the Deputy Minister in deference to the Privy Council directive, is unclear. In day-to-day practice, this question may be moot. Discussions with former exempt staff regarding the utility of these profiles seem to indicate that as a point of reference, the Treasury Board descriptions, while perhaps useful as a general guideline to the structure of a Minister's office, were given only cursory attention, if any at all, by Ministers and their staff. Nonetheless, in instances such as the Sponsorship Inquiry, where the determination of wrongdoing requires the existence of a consistent set of rules and conventions against which to judge the propriety and regularity of any actions taken by ministerial staff in their relations with public servants, and given the economy of formal direction that exists on this subject, it would be advantageous if Treasury Board could spell out its guidance on this matter so as not to, by inference, create any confusion in the message being sent to the practitioners.

With the ever-increasing demands on the time and energies of members of the Cabinet, there is no question that the existence of political staff makes life for a Minister bearable. "The ministerial staff is essential," says Arthur Kroeger. "The Minister is an institution with various activities and responsibilities. You can't go running to the Minister with every issue, so there is a need for the staff to act as proxy." The Honourable John Crosbie describes the pressure put on a Minister as "unbelievable. You spend about 32 hours a week sitting on your arse in Cabinet or Committee meetings, Question Period and other types of meetings. You couldn't be everywhere so you need able assistants."[70] He cites the staff's primary obligation and a Minister's first concern as the need to know of anything that might be happening in Parliament or the riding that could affect either the Minister's or the government's chances of re-election.

This overriding exigency, reminiscent of the ageless axiom that a democratic government's first priority is to get re-elected, is, for better or worse, what motivates ministerial staff to do much of what they do. They must view the machinations of government through a political prism, act as the Minister's eyes and ears, manage the flow of paper, e-mail and access to information requests, respond to constituents, cooperate with PMO and PCO and above all, protect their Minister and government from any action or issue that might adversely affect their chances of re-election.

Evidence suggests that ministerial staff carry out these functions with a wide range of competencies, egos, ignorance, ineptitude and talent. Each office and administration forges its own unique culture, rivalries, alliances and "personality". The range of amateurism to professionalism varies widely, and despite the many revisions in titles and salaries of exempt staff over the past few decades, the consensus appears to be that not much has changed in terms of their behaviour. Most peg the ratio of "good" staff to "bad" at about 50:50 or at best 60:40. Many reflected Arthur Kroeger's sentiment that, "when you get good ministerial staff, they are jewels," but all had seen many instances where ministerial staff had, both individually and collectively, acted badly, and sometimes, corruptly. Almost all sources identified the importance of having the Minister and Chief of Staff set an appropriate tone in the office, although many admitted this leadership was, in many cases, sorely lacking. As former DM Harry Swain explained, "Education and leadership are essential. If the Minister or PMO assert the eternal verities and are clear in their expectations in terms of output and process, and if that is reinforced by the department and deputy, if they correct when things go astray and make rules that are easily amenable to a modest amount of direction, then it is not a system that is easily broken..."

What is the character profile of the ideal ministerial assistant? While the answer to this question may vary according to the personality and responsibilities of the Minister, there are a few qualities in ministerial aides that have been identified as being universally desirable. "What you really want in ministerial staff is judgement," says Arthur Kroeger. "Judgement is like electricity. It's hard to define but very evident when it fails. Good judgement is key." Another former bureaucrat pointed to "energy, intelligence, discretion, recognition of the constitutional roles that folks play and a willingness to play by the rules... the suppression of their own ego to let the Minister shine...There are some very good individuals; others are venal, incompetent and dishonest." Former EA, Ron Hallman, recalls advice from Alex Himmelfarb, the Clerk of the Privy Council, that served him well during his time on the Hill. The key, according to Himmelfarb, was for staff to provide "fearless advice and loyal implementation." The need for loyalty in staff members goes without saying, but former Chiefs of Staff also point to confidence and courage as two necessary attributes. Situations often arise where the best advice is to tell the Minister or the PMO that "no, that is not possible." In the absence of those qualities, advisors are not likely to have the fortitude to stand up to their political masters. By contrast, "excitability" in these roles was never perceived as an asset. In its annual survey of top ministerial aids entitled, "Terrific Twenty-five Staffers on the Hill", *The Hill Times* identifies knowledge, influence, and discretion as being among the most valued attributes of exempt staff, along with competence in "spin control" and access.[71]

Almost without exception, those interviewed for this study felt that there was a direct correlation between the strength of a Minister and the strength of his or her staff. Almost inevitably, I was told, if the Minister is unsure of his or her objectives within the department, has no sense of direction or judgement and is fearful of making decisions — if he or she, as one former EA put it, "goes into a crouch and becomes defensive in front of intelligent people," then it bodes badly for the calibre of his or her staff. These Ministers inevitably surround themselves with individuals who are weak, unfocused and egotistical. Their staff tend to be demanding and rude, yelling at officials and being overly assertive in their dealings with the bureaucracy. Officials characterized these advisors as "Hitler Youth," "pit bulls" and "bullies," with the blame for their poor behaviour squarely directed at the weakness and lack of leadership among their Chiefs of Staff or Ministers. Rarely, it seems, will an incompetent Minister agree to take on a strong and experienced Chief of Staff. "I have an informal rule for this;" said one former Deputy Minister, "first-rate Ministers have first-rate Chiefs of Staff and second-rate Ministers have fourth-rate Chiefs of Staff…"[73] A less common but still occasionally apparent situation is where the Minister becomes distrustful, antagonistic or estranged from his or her own political advisors. Such situations can become so poisonous as to make the Minister's office almost completely dysfunctional and usually call for the intervention of the PMO to try to contain the damage. Occasionally, as one former Deputy recounts, the PMO itself can itself create an atmosphere of distrust within the ministerial office:

> If you are in a department where the minister mistrusts the chief of staff because the chief of staff was given the mandate to control the minister and was appointed by the Prime Minister's Office, the whole thing could be dangerous. I experienced this type of situation and had to defend a minister against his chief of staff.[74]

In addition to any discord that may on occasion arise between the Minister and staff, some ministerial offices degenerate into factions, with dissention arising over personal loyalties or jealousies, linguistic or philosophical differences and ethics. The competing pressures of political expediency and government regularity can often result in significant moral dilemmas for political staff, many of whom are too young and inexperienced to deal appropriately with this level of ethical crisis. Incidents can range in scope from low level corruption, such as the submission of false or "padded" expense claims and the inappropriate use of the signature machine, to staff being asked to look the other way, or direct public servants to do so, with regard to important politically-charged matters, such as immigration certificates and program funding, as recent events can attest. In his report on the conflict of interest allegations in 2005 levelled at former Immigration Minister Judy Sgro, Ethics Commissioner Brian Shapiro identified the discord apparent in the Minister's office as being one of the key factors in the breakdown of regularity in the allocation of Ministerial certificates. Writes Shapiro:

> …there were serious tensions among the members of the Minister's staff. It appears—the evidence is not entirely clear—that there were two "camps": staff perceived to be associated with Ian Laird, then Chief of Staff to the Minister, and those who were more closely identified with Ihor Wons, one of the Minister's policy advisors, who was on a leave of absence during the election campaign itself. These tensions certainly pre-dated the campaign, but their consequence during the campaign was a staff divided and not inclined, therefore, to be either as cooperative with each other or as helpful to and careful of the Minister as they might otherwise have been. The decision made following the campaign to dismiss virtually the entire staff speaks volumes as to what must have been occurring in the previous weeks and months.

As a cautionary tale writ large, there can be no better example than the "Sgro Affair" to illustrate the dynamics of a ministerial office gone wrong. As this incident clearly illustrates, the integrity, honesty, and professionalism of the Minister, Chief of Staff and senior advisors play a significant role in setting the appropriate approach and level of professionalism. Some staff succeed beautifully, others seem to revel in "controlling the cookie jar" to the detriment of both the principles of good governance and their Minister's political fortunes.

3.5

Dancing with the Little Darlings: Bureaucratic/Exempt Staff Relations

It quickly became apparent during my research that when it comes to determining the tenor of bureaucratic/exempt staff relationships, there are clearly no absolutes. The day-to-day reality of ministerial-departmental interface seems to fall somewhere on a broad continuum between a well choreographed "pas-à-deux" and two ferrets fighting in a bag. Some Minister's offices have good relations with their department, some have not; some Deputy Ministers and Chiefs of

Staff share a mutual respect, some do not; some offices recognize and abide by the conventions meant to govern the bureaucratic/political relationship, and some do not. The origins of this variability are both institutional and historic, and despite decades of practical experience and ongoing tinkering with titles, the fundamental dynamic between the two sides appears to have changed very little over time. "There is always an inherent tension between a Minister's office and the department," says Arthur Kroeger. "The stereotype of the relationship between the ministerial staff and the department is not far off: the departmental staff see the ministerial aids as energetic and ambitious in a job that exceeds their judgement, experience and manners; staff sees the bureaucracy as old, plodding and obstructionist."[74]

There are also institutional imperatives that influence this exempt staff/departmental dynamic. Professor C.E.S. Frank's observations on this subject point to the inherent and often conflicting imperatives that drive the bureaucratic versus the political persona as being a primary determinant of this relationship:

> The interests and concerns of ministers and the staff of ministers' offices are not necessarily the same as those of the public service. The public service is, or ought to be, concerned with propriety and regularity, with the need to observe rules, and to operate within the statutes that form the legal framework for program and financial administration. Ministers' office staff are concerned with responding to day-to-day pressures, which are often of an idiosyncratic and individualistic nature. Rules can be less important than observed needs and wants to those operating in the political rather than the bureaucratic realm.[75]

Viewed from this perspective, the clash of values, pressures and cultures—rigid and structured on the one hand, immediate and politically driven on the other—provide the perfect context for a dynamic and volatile relationship. Add to that theoretical background the personal chemistry and ideological predispositions of the individuals involved, particularly the Minister, Deputy Minister, and Chief of Staff, and one begins to see an endless set of possible combinations and permeations within that dynamic. As a rule however, if the working relationship among these three is cordial, mutually supportive, respectful and complicit, any problems emerging further down the pecking order can be addressed and corrected with relative ease. If not, the fireworks begin.

Not surprisingly, the greatest tensions between the department and ministerial staff often arise at the start of a new administration. As former DM Harry Swain explains:

> It is normal for a new government to be highly suspicious of the civil service—the first six months can be tough. There is a lack of trust from the political side and the civil service has to work harder to demonstrate their loyalty to the government of the day…David Dingwall's conversation with Guité where he said 'you didn't rat on them, you likely won't rat on us' recognizes one of the basic values of civil service: loyalty to the current administration. It means they do not share notes from the previous administration with the new government. It means the PCO note takers and those that do the MCs (Memoranda to Cabinet) are always in possession of information that is not available to the new government.

At the dawn of a new administration, there is also the intoxicating afterglow of political victory still burning in the veins of many newly appointed staffers. Inevitably, they arrive in Ottawa with an idealistic and sometimes overwhelming sense of mission and purpose as well as an often disproportionate sense of entitlement and omnipotence vis-à-vis the public service. A former Deputy Minister recalls the advent of one new administration "…there was a kind of illusion among political staff that they were very powerful, that they had come to save the nation and the government. With the passing of time, all that diminished…" And indeed, reality appears to temper even the most ardent crusaders.[76] According to Hugh Segal, former Chief of Staff to Prime Minister Mulroney, "you have about three months to decide if you are going to work with the public service or against them, and if you decide to work against them, they will kill you…you must bring the public service on side (at the start)… In a four year electoral cycle, you don't have enough time to turn them around." Segal identifies the role of the departmental assistants, those assigned to the Minister's office by the department and selected with great care and judgement by the deputy minister, as key to bridging the divide between the department and the ministerial staff, especially in the early, precarious days of a new administration. "They know how all the internal systems operate — if you have an interesting idea they will say, 'that's great' but here are three statutory reasons why you can't do it that way. Now here's how we can do it honourably."[77]

To this day, the role of ministerial staff in policy development continues to be the burr in the saddle of political/bureaucratic relations. Despite decades of discussion surrounding the legitimate role of political advisors in the policy process, the old ideological chasm remains as intransigent as it was in the debate between Mallory and Tellier. Witness the comment of one former Deputy Minister:

> The role of the ministerial assistant should centre around the relationship with the caucus, the constituency and the Minister's personal schedule; when they stick to that kind of knitting there is no problem. The difficulties arise when they start to act like Leo the 10th, "God has given us the papacy, now let us enjoy it." They want to be policy hounds and think they know all about it, and usually the intellectual apparatus is an ideological disposition — Christian, free market, union — and on that basis, they try to influence departmental policy. Not with the Deputy Minister — they'd get their head bitten off. They try to find and cultivate mid to low level civil servants and start getting backstairs routes to information and influence.

This perspective stands in stark contrast to the policy role defined for these advisors in the Treasury Board Secretariat's guidelines. According to the government, a senior policy advisor:

- is responsible, in collaboration with the Department, for overseeing policy development on behalf of the Minister;
- is also responsible for advising and briefing the Minister on all relevant policy issues;
- needs to work closely with the Prime Minister's Office and other Ministers offices in order to coordinate the development of policies and programs within the Government;
- must ensure that policy development within the Minister's responsibilities are consistent with the broad policy goals of the Government, as laid out in key documents such as the Speech from the Throne and the Budget; and,
- should work closely with key stakeholders in order to inform and/or consult on important policy initiatives within the Minister's purview.[78]

Clearly from this description, Treasury Board perceives policy development to be a collaborative responsibility, with the Minister's office taking an active, if not principal role in the process. As Donald Savoie observed in *Breaking the Bargain*, this engagement of ministerial staff in the policy process is far from a new development. "From the early 1980s on, most politicians have made it clear, time and again, that they want doers and fixers in government, not thinkers, and that they and their partisan advisors would deal with policy."[79] It is however apparent that, to some degree, this perspective continues to hit a bureaucratic blind spot. Departments, particularly those dealing with mandates of a highly technical nature, remain convinced that the role of ministerial staff should be restricted to that of political weathervane and that their "interference" in the policy development process can result in serious, if not dangerous, consequences for the Canadian public.

This ideological divide is not the only institutional obstacle to smooth relations between political staff and the bureaucracy. As was noted earlier by J. R. Mallory, significant disparities in age, education, level of experience and technical expertise between ministerial staff and departmental personnel can result in an uneven and sometimes rancorous relationship. The impact of this disparity is exacerbated by the simple fact that it is the younger, often less experienced, political advisors who come to the process bearing the weight of ministerial authority and who, despite their often lesser qualifications, are in a position to exert greater influence by virtue of their proximity and access to the Minister. In other words, the ministerial aides are seen to wield a level of influence over policy that is inversely proportional to their qualifications and abilities. Like a symphony orchestra forced to follow the baton of an amateur conductor, the public servants I spoke too appeared intensely resentful of this uneven relationship. Interestingly, the most virulent comments tended to arise from those lowest in the departmental policy hierarchy where, unlike the Deputy Minister or other senior officials, the opportunity to circumvent the ministerial staff and communicate directly with the political level on policy initiatives was largely beyond their reach. I was told of meetings convened with no other purpose than to determine a strategy to circumvent the ignorance of the ministerial staff and ensure departmental policy or proposals rose to the top largely unadulterated. While here I must caution that this resentment and inequity in age, expertise and experience between departmental and political policy advisors was not universal, it did nonetheless emerge as a recurrent theme in discussions of ministerial staff/departmental relations.

That is not to say that public servants today do not recognize some value in the presence of political staff. The doctrine of political neutrality dictates that departments do not include political considerations in their briefs to Ministers. Should a policy issue become the focus of a political maelstrom, the ministerial staff now provide a welcome layer of asbestos between departmental officials and the flames of that controversy. As Donald Savoie points out:

> The presence of ministerial staff is more tolerated in government operations than it was twenty-five years ago. *Access to Information* legislation and the media have made government operations and programs more sensitive to politics and political direction....they (public servants) agree that matters that have become issues of partisan controversy are not appropriate for formal briefings and they welcome any opportunity to isolate themselves from the partisan political process. In any event, in many instances it is better for them to have exempt staffers brief the PMO than to do it themselves.[80]

Indeed, if a messenger need be shot, the public service seems only too willing to serve up the Minister's staff and avoid the fallout of both the Minister's wrath and the media scrutiny.

Essential to this exercise of discerning which side, political or bureaucratic, speaks to what, however, is some common definition shared between the Minister's office and the department as to what exactly constitutes the "political". At first blush, such a delineation would appear to be obvious. In practice apparently, this is not always the case. Former EA Tony Macerollo emphasized the need and value of Chiefs of Staff and Deputies arriving at some common understanding of where this line should be drawn. Simple assumptions of what each side expects to fall on either side of the line cannot be made. Like good fences and good neighbours, a clear delineation of the turf at the outset of a mandate can make for a more harmonious and cordial political-bureaucratic relationship and provide a necessary and critical point of reference should either side begin to transgress the boundaries. In the absence of such a common understanding, important items can "fall between the cracks" when a crisis hits.

When the system works, it can be a thing of beauty. One former official at PCO offered the following simple, hypothetical example of how the "marriage" of departmental and political advice might work in harmony to create a viable and politically sensitive outcome: the Department of National Defence comes forward with a suggestion that much needed financial resources could be found by closing the Goose Bay military base in Labrador, their analysis having indicated that it currently makes no fiscal or operational sense to keep it open. The political staff say, "Wait! That will throw 20,000 people out of work in an already depressed area. We appreciate the revenue it would release, but we would never get our member re-elected in that region if this were to go forward." In the ensuing discussions, a consensus is reached by both sides and ratified by the Minister not to close the base until an alternative source of employment can be found to replace the anticipated job loss. The decision recognizes the futility of keeping the base open but prevents the potentially disastrous political fallout of a sudden announcement.[51] Likewise, political staff can play an important role in informing the Minister on matters such as the level of support that is needed on key parliamentary committees to push through a recommended departmental action, if the public opinion polls are running against it, or if it conflicts with any other government priorities or programs. They can liaise with the offices of other Ministers who might be implicated by the action and ensure that both PMO and PCO are supportive. Chiefs of Staff repeatedly pointed out the need for senior political staff to be able to "marry" the departmental advice with the political in order to provide their Ministers with recommendations for action that respond appropriately to both. If this can be accomplished through a waltz rather than a war, so much the better.

3.6

Thou Shalt Not Give "Direction"

The principle governing the relationship between ministerial staff and public servants is very clearly, if somewhat cryptically, spelled out in the PCO document, *Governing Responsibly: A Guide for Ministers and Minister of State (2004)*. In that document, the PCO states that, "exempt staff do not have the authority to give direction to public servants, but they can ask for information or transmit the Minister's instructions, normally through the Deputy Minister."[81] Similar instruction to the bureaucracy appears in the Deputy Minister's guide prepared by the same office.

While a masterpiece of succinctness and simplicity, this statement appears surprisingly minimalist given the complex and diverse range of relationships and circumstances it is meant to govern. It, in effect, casts the ministerial advisor in somewhat of the role of "glorified messenger" between the Minister and the department, a two-way conduit of information and instruction devoid of authority, personality or influence in its own right. It offers no distinction in the tenor of ministerial staff authority vis-à-vis the department whether it be the Chief of Staff or the most junior special assistant, but then again, how could it advise otherwise? In its determination of the appropriate boundaries of the exempt staff direction, the PCO has no point of constitutional or theoretical reference. It has therefore come to the very logical conclusion that ministerial staff, having no direct constitutional authority with regard to the public service, can wield none.

How this edict plays out in practise is another matter. Can it be workable? Is it respected? On the basis of my research, I was tempted to report the answer to be a resounding "no," but upon further consultation, the more accurate response appears to be far more complicated than that. One has only to broach the subject with public servants to be plied with anecdote after anecdote that reveal examples, large and small, where ministerial staff have, on their own authority, given instruction to the department. These range from relatively minor instances where changes were ordered to the wording of a document, to demands for revisions to a funding formula negotiated by public servants with the provinces, to, as evidence at the Sponsorship Inquiry suggests, direct "input" into the selection of recipients for the government's largesse. One official recounted that when a former ministerial aide joined her departmental staff, she had to continually coach her on how to work with people. "She was just so used to telling people what she wanted and expecting it to happen," said the official.

Such abuse of the rules is not always the case. In fact, in many well-run offices, Minister's directions are recorded at meetings, along with the name of the aide tasked with their delivery, and the action tracked thereafter. Some offices have policies in place that ensure that any information requested by political staff from the department must be returned to the office in the form of a memo addressed to the Minister with the name of the aide who made the request on it. The Chief of Staff or senior advisors will review the departmental memos and either redirect them to the appropriate aides or forward them to the Minister's attention. In this way any frivolous, spurious or inappropriate requests of the department are discouraged or quickly detected. Such professionalism serves as an exemplary counterpoint to the offices where Ministerial staff are "all over the department," but it is difficult to determine just how many offices enforce such strict discipline. The bulk of conversations seem to suggest that many ministerial staff seem to adopt a fairly liberal interpretation of the rule, sometimes through practical necessity, sometimes based on a close trust relationship and understanding of the Minister's political agenda and the "direction" that would naturally flow from that, other times out of an overly generous interpretation of their role as "proxy". One former Special Assistant admitted that he and his colleagues were pretty loose with the term, "the Minister wants," when it came to their dealings with the department and that, in many cases, only the broad strokes behind such instruction had been issued by the Minister.[51] In this, as with many other matters within the ministerial office, the personality and managerial capacity of the Minister and Chief of Staff, as well as their own understanding and respect for this political/departmental convention, play a significant role in the degree to which "direction" is, or is not, given.

The complicity of the department can also play into this equation. Both parties must be privy to the transgression to allow the convention to be broken. While Deputy Ministers and other senior officials I spoke to seemed to be quite resilient to any inappropriate "suggestions" or directions from ministerial staff, many lower level public servants felt it was rarely in their professional interest to ignore the input of the ministerial office. In fact, semantics seem to play a leading role in the theatre of ministerial staff direction. As testimony at the Sponsorship Inquiry clearly demonstrated, ministerial staff does not need to issue explicit orders for departments to understand their intentions. Repeatedly, Jean Marc Bard, Chief of Staff to former Minister Alfonso Gagliano, argued that he and his staff had never offered more than "suggestions" to departmental personnel over the choice of sponsorship events or advertising agencies. Mme Huguette Tremblay, the official in Mr. Guité's office on the receiving end of these "suggestions", testified that she never viewed these as anything other than directives. Hence both parties were privy to the deception, a wink-nod relationship that allows the ministerial staff to protest their adherence to the letter of the "no direction" guideline, while "sinning in their hearts" against the spirit of the protocol.

While it may seem naïve to think that ministerial staff "input" to the department would ever be taken as anything other than "excellent advice" by department officials, there are others who contend that under normal circumstances, in its day-to-day interactions, the bureaucracy is not so easily compromised. "Hogwash," said one former EA when asked if bureaucrats feel obliged to follow ministerial staff direction. In this former staffer's opinion, the PCO guideline provides clear instruction to departments that they do not need to take direction from ministerial staff. Bureaucrats, he said, have to get over their fear of saying "no" and any perceived "loss of face" that might result from such a refusal. The system can only work, he suggests, if rules such as this are respected and everybody operates in a spirit of transparency. In one of the more astute observations that I was offered during the course of my interviews, this former Chrétien-era EA explained what he felt was the basis for much of the departmental complicity. "Sometimes," he said, "bullies win not because they can beat you up, but because they sound like they can beat you up."

3.7

Is Direction Needed?

While opinions may be divided on what amount of ongoing ministerial staff/departmental interaction constitutes "direction", there is nonetheless a practical case that must be explored in defence of that practice. If we are to accept that a Minister's time is limited and must be reserved for only the most important and significant meetings and decisions, and that it is essential to the timely and efficient workings of government that Ministerial aides, especially the Chiefs of Staff and directors, serve, in effect, as "proxies" for the Minister, then it must be assumed that there will be decisions at a micro-management level that must be taken by those proxies and that those proxies do, de facto, have the authority, in the Minister's name, to make them. It is both impractical and impossible that every issue that arises from the department be taken to the Minister. Such an imperative would grind the machinery of government to a halt and tax the energy and ability of even the most robust minister beyond endurance. The ministerial staff therefore becomes the end point for all but the most important decisions. By definition, some degree of "direction" would flow from there.

This necessity appears self-evident to many who have served in that system. Citing a Minister's regular absences on government business and often lack of availability to deal with urgent matters, former EA, Fred Drummie, pointed to the practical need for public servants to recognize that, "any decision taken by the Chief of Staff is the same as a decision taken by the Minister. The Chief of Staff is the Minister's alter ego and that must be understood". Micheline Plasse's study of Chiefs of Staff in 1990 seems to have drawn a similar conclusion: "...the chiefs of staff seem to be an extension of their respective ministers rather than entities distinct from their ministers..."[54] There is however, a degree of subjectivity that must be exercised when determining the degree of authority that Chiefs or other ministerial staff can legitimately wield. To exercise this proxy effectively, the staff member must have—and be seen to have—the complete confidence of the Minister. They in turn, to the best of their ability, must ensure that their decisions accurately reflect the intentions of both the Minister and government. Should they not and that confidence be lost or the delegated authority abused, then dismissal of the exempt staff member serves as the ultimate consequence.

Unfortunately, it is in the realm of accountability that this very practical "proxy" approach to governance from the ministerial office hits a glitch. The Privy Council guide clearly states, "Ministers are personally responsible for the conduct and operation of their office."[55] While ministerial staff operates in the above scenario as "proxy" for the Minister under an assumed authority from the Minister, Ministers cannot legally transfer their authority except through legislation. Any authority exercised by ministerial staff is therefore presumed rather than real. It follows logically that in the event of wrongdoing arising out of ministerial staff direction, Parliament would hold the Minister directly accountable. This works effectively as long as Ministers are willing to accept this as legitimate. As several incidents that will be explored later in this study have indicated, Ministers appear to feel no such obligation.

The result is that the ministerial office has become a sinkhole of accountability. The dismissal of the guilty staffer does nothing to satisfy the constitutional requirement to legally hold some party under its jurisdiction to account. It is an issue with significant implications, as several aspects of the Sponsorship Inquiry have indicated and, given the existing and growing power of Chiefs of Staff and the PMO, might be worthy of an investigation beyond the scope possible within this study.

3.8

"Normally" through the Deputy Minister

The Privy Council guideline regarding exempt staff/departmental interaction states that ministerial staff's requests for information or the delivery of instructions should take place "normally through the Deputy Minister". While the evidence suggests that in a well run department, the Deputy Minister and senior officials are "kept in the loop" by subordinates when their energies are being engaged or directed by the Minister's office, here again the PCO guideline appears to be honoured more in the breach than in the practice. In his testimony before the Sponsorship Inquiry, the current Clerk of the Privy Council, Alex Himmelfarb, seems to reflect the general acceptance and legitimacy of this broader range of interactions, in spite of the fact that it contradicts the spirit of his department's own directive. "There is a huge amount of flexibility in our system about who interacts with whom," testified Mr. Himmelfarb, "and we don't have walls to stop it. In fact, in many cases it is encouraged for logistical reasons, for other reasons…"[86]

The "other reasons" most often cited for this hierarchical bypass are expediency, efficiency and geography. Given the often crisis-driven tempo of a Minister's office, the need for information and the delivery of instruction from the Minister's office often occur in an atmosphere of urgency. Staff, spurred on by the aura of impending political crisis or a Minister's order to "get it done!", pick up the phone and contact the appropriate official directly. Other direct contact evolves quite naturally. Ministerial advisors often participate in interdepartmental or departmental meetings. Personal contacts are made and working relationships established. Staff involved in meetings or events outside the capital will inevitably come into contact with regional members of the department. Here too, professional relationships are established and continue once the advisor has returned to Ottawa. From a purely practical perspective, even on the best of days, the time and energy that would be required to sanction each of these numerous contacts through the Deputy Minister, as suggested by the PCO guideline, would all but paralyze the system. Being impractical, it is largely ignored. For the most part, these "below stairs" relationships are constructive, efficient and — assuming the departmental officials keep superiors apprised of any major developments, concerns or demands — innocuous. As long as all sides stick to their respective roles, the system, by and large, bumps along with an acceptable degree of efficacy, efficiency and propriety.

Except, of course, when it doesn't. As testimony at the Sponsorship Inquiry suggests, some of these direct relationships between officials and political staff can result in events veering precariously off the path of propriety. The existence of direct bureaucratic-political alliances such as developed between Chuck Guité, the Minister's office and the PMO can result, either by design or default, in there being only cursory involvement by the Deputy Minister and effectively removes one of the crucial "checks" in the system. When a forensic analysis of events ensues, the existence of these diverse channels of communication can significantly blur the lines of blame and accountability. It can result in those responsible for ensuring the propriety and regularity of the system, specifically the Deputy Minister under the *Financial Administration Act* and the *Public Service Employment Act*, either being unaware of what is going on or stepping back and deferring to the political level.

The testimony of Ranald Quail, the Deputy Minister of Public Works and Government Services at the time of irregularities in the Sponsorship Program, suggests just such a deferral. Mr. Quail, who should have, by convention, been highly uncomfortable with internal audit reports that suggested a disturbing amount of irregularity in the administration of the Sponsorship Program, a program he was aware was being managed with a great deal of political "input" and of priority and interest to the PMO, stated that he never informed the Clerk or sought his advice with regard to this file. The PCO document, *Guidance for Deputy Ministers*, makes it very clear as to the appropriate course of action open to a Deputy Minister in the event of such concerns:

> ...If a disagreement affecting the operations of the department cannot be resolved between the Minister and the Deputy Minister, the Deputy Minister will want to discuss the matter with the Clerk of the Privy Council.
>
> A Minister may also choose to discuss a concern with the Clerk of the Privy Council before seeking the consideration of the Prime Minister. Ultimately a matter which results in an apparently irreconcilable difference becomes a matter for resolution by the Prime Minister, with advice from the Clerk. Deputy Ministers should also consult the Clerk in cases where problems have occurred in the management of the department or the Minister's portfolio, and which may have an impact on the Ministry's ability as a collectivity to maintain the confidence of the House of Commons and move forward its legislative or policy agenda. In such instances, the Deputy Minister may also want to consult the Secretary of the Treasury Board.[illegible]

While this convention could not be articulated more clearly in the guidelines, in practice it may be assumed, especially with regard to highly political files, that Deputy Ministers might rather seek advice from more politically-informed sources, that is to say, senior members of the

PMO. This would not be an unprecedented action. It is a commonly recognized and respected practice in Ottawa that Ministers regularly consult and seek the advice of senior members of the PMO, especially the Prime Minister's Chief of Staff, on any number of controversial or politically sensitive issues. This represents a logical and appropriate progression of consultation within the political branch of government. It does however raise the spectre of a similar line of consultation being pursued by senior departmental officials. If Ranald Quail did not take his concerns to the Clerk, was direction perhaps sought and received at the political level instead?

Regardless of what occurred in this instance, the possibility that exempt staff in the PMO might play an advisory role to Deputy Ministers in the event of concerns over departmental irregularities on politically sensitive files raises some troubling issues. The significance is twofold: first, it suggests a by-pass of the Clerk, that is to say, it ignores the long-established convention that sees matters filter up through the bureaucracy from the Deputy Minister to the Clerk before they reach the senior executive level. In this hypothetical scenario, that political/bureaucratic interface would deviate from that path and "go political" at an earlier stage. The Clerk, in his prescribed role as Father Confessor to the Deputy Ministers, is effectively cut out of the loop. This departure from convention would represent a serious abrogation of the well-established lines of public service authority, but would not be a totally unreasonable option in the world of *realpolitik*. Secondly, this option would frustrate the normal lines of accountability. It would also obscure the lines of "blame-ability" and vest in the political staff a decision-making authority for which they, in their own right (unlike the Clerk or the Prime Minister) cannot be held politically or legally accountable. In such a scenario, if the Deputy seeks no further advice and the matter becomes the subject of a scandal, it is the Deputy, not the PMO staffer to whom he turned, who would be held ultimately responsible. Such would not be the case were the Clerk or the Prime Minister consulted.

3.9

Indirect Direction and Other Forms of Folly

In addition to any explicit or euphemistic "direction" that exempt staff may give to department officials, public servants point to a number of mechanisms that allow Minister's staff to influence or control the activities of the department. Significant power can be exercised simply by their control of the timing and flow of information to the Minister. Decisions to delay, bury, promote or "reinterpret" information emanating from the department can all have a significant impact on policy outcomes. Unquestionably, some of the involvement of exempt staff models the theory and results in more politically astute and intellectually robust decisions and policy outcomes. The real danger, however, lies, according to one senior government official, when exempt staff allows political considerations to outweigh the science: "The Minister's staff gets to interpret the information and content that the bureaucrats provide…Information filters up and back down and you wonder if it ever gets seen by the Minister. Stupid Ministers tend to have stupid staff and because they don't want to be threatened (by the expertise of the public servants), major policy ends up being developed in an intellectual vacuum."

The ability of a Minister's staff, especially the Chief of Staff, to influence or "direct" the department simply through their access and proximity to the Minister cannot be discounted. They are the ones who decide which files warrant priority, triage memos from the department and choose which documents the minister will see; they provide briefings and advice prior to and following meetings and are there at the end of the day to sit for an informal chat or debrief the Minister on the latest political and departmental gossip. There is no question that the staff, and especially the Chief and senior directors, have the power and opportunity to influence the Minister and that this, in turn, might impact on how departmental recommendations are received. The degree of competence and expertise with which they exercise these powers of selection, filtration and triage, and by extension, the direction of political or departmental affairs, can have a profound impact on policy outcomes. They can also lead to political disaster.

The incredible volume of information, e-mail, correspondence and memos arriving at a Minister's door or bubbling up from within the department requires that the exempt staff exercise a degree of discretion in the selection of which items should be brought to the Minister's attention. This "triage" has several objectives, the most obvious being that it reduces the volume of material that a Minister must read and attend to. Having separated the wheat from the chaff, those items of lesser importance can be redirected to members of the staff or department who might more appropriately address them, leaving only the most critical issues to be brought to the Minister's attention. Secondly, this practice "protects" the Minister from seeing information of a politically controversial nature and offers them the protection of "plausible deniability" should they be asked "when they knew" on the floor of the House of Commons. While a verbal briefing might alert a Minister to a potentially explosive situation, there would be no tangible proof in the records of the matter ever having been brought to his or her attention.

Obviously, the political judgement of the staff member undertaking this triage is critical to ensuring that the right items are either brought to the Minister's attention, or not. An example of the fallout, or perhaps effectiveness, of this practice was recently noted at the public inquiry headed by Justice Dennis O'Connor into the detention and alleged torture in a Syrian prison of Canadian Maher Arar. The Inquiry attempted to establish whether then-Foreign Affairs Minister Bill Graham was aware at the time that this imprisonment of a Canadian citizen in Syria might result in Mr. Arar being subject to torture. A newspaper account of the testimony reveals that this information, although offered up by the department, never reached the Minister:

> Mr. Pardy (the Director General of Consular Affairs) has also said he suspected that Mr. Arar was being tortured early in his detention and has testified he told officials in then-Foreign Affairs Minister Bill Graham's office. The news apparently did not make it to Mr. Graham or his senior policy advisor Robert Fry, both of whom have told the inquiry they had been unaware of possible torture at the time.[58]

Given the temper of the times and the fact that Mr. Arar was under suspicion by authorities at the Canadian Security Intelligence Service for having possible ties to the Islamic extremist group Al Qaeda, those in the Minister's office confronted with this unsettling information would face a difficult decision. Should the Minister be informed and advised to intervene in order to protect a Canadian citizen from torture? What if the Minister intervened and Mr. Arar did, in fact, turn out to have terrorist connections? Perhaps better to leave the Minister, at least in any traceable sense, ignorant of the matter rather than risk taking any action for which he might be held politically liable. Years later, the matter now the subject of a public inquiry, the Minister is quite comfortable in absolving himself of any blame or accountability for what was or was not done simply because the trail of information concerning Mr. Arar's torture ended before he received it. In hindsight, he can argue that had he known, he would have intervened, but without the necessary information, how could he have been expected to act?

This ability of Ministers to deny responsibility or accountability in matters where their staff either choose not to inform them as a strategically political protective measure, or where their advisors, through ignorance, incompetence or lack of judgement, fail to inform them because they did not recognize the significance of the information, raises important and serious questions about the current integrity of our system of accountability. If Ministers cannot be held responsible or accountable for the actions (or inactions) of their staff, then who can be? As we have noted earlier, the minister's staff carry no constitutional accountability in their own right. If orphaned by their Minister in the face of controversy, this intermediary group of advisors becomes a quagmire in the due diligence process of government accountability, with the department on the one side arguing that they have fulfilled their moral and statutory responsibility by informing the minister's office of the matter and the minister on the other, arguing that he or she was not informed and therefore cannot be held accountable.

The use of this doctrine of "plausible deniability" as an effective strategy to avoid or deflect political fallout from a matter directly under a Minister's purview was wielded most effectively in the early days of the Mulroney administration during an incident known as the Al-Mashat affair. Briefly, Mohammed Al-Mashat was a former Iraqi ambassador to Washington and a familiar media spokesperson for his country during the lead up to the first Iraqi Gulf War. Very shortly after being recalled to Baghdad in 1991, he and his wife had entered Canada as landed immigrants in the retirement class. The ensuing public furor over the arrival of a man so closely tied to the Iraqi dictatorship raised a political maelstrom. The government responded by declaring that the immigration process for Mr. Al-Mashat had all taken place completely at an administrative level within Immigration and External Affairs and that Joe Clark, the Minister of External Affairs at the time, could not be held responsible for what was obviously a highly sensitive and political decision because he was not made aware of the application. The government held two individuals responsible for this administrative blunder: a high ranking senior official in External Affairs, Raymond Chrétien, and Mr. Clark's Chief of Staff, Mr. David Daubney. While several issues were raised vis-à-vis the government's deflection of responsibility for the matter on to a career official, thus circumventing the doctrine of ministerial responsibility which holds a Minister responsible for all actions taken by his or her department, it is with the government's reaction to the role played by Mr. Clark's Chief of Staff that this paper is concerned.

In a nutshell, Mr. Daubney failed to inform his Minister of the matter. He argued that although Raymond Chrétien and the departmental assistant had in fact forwarded the information to his attention, they had failed to properly highlight the item with a marker, which was the signal that this item was worthy of special attention. Secondly, he reported that the policy review system that he had implemented in the Minister's office shortly after his arrival was designed to detect such important matters. For reasons he could not explain, the system was not followed. Further, he felt that even if he had seen the memo, it was unreasonable to expect him to know the name of every former Iraqi ambassador and that this was not his area of expertise (albeit if his Treasury Board job description is to be believed he was the Minister's top political advisor on issues of foreign affairs). As it turned out, Mr. Daubney had actually read the crucial memo but subsequently lost it.[89]

Sharon Sutherland, in her insightful examination of this matter, illustrates several issues of relevance to this current study. Firstly, she questions the validity of governments' and Ministers' use of the fallibility of the political staff and their "failure to inform" as an excuse to deflect their own responsibility or accountability. Secondly, she raises the issue of the appropriateness of the Standing Committees of Parliament to question officials, both departmental and ministerial, with regard to alleged wrongdoing as a substitute for ministerial answerability. She points out that in this purely political public forum, these officials and advisors have no standing and therefore no rights or protection. (Though political staff may be seen more rightly to be political, they too remain without rights or protection before a parliamentary committee.) And finally, she identifies the danger posed by the abdication of Ministers of their direct responsibility and accountability for the actions or inactions of their staff. As has been noted earlier in this study, this statutory limbo in the face of this ministerial "dis-ownership", while perhaps serving a political purpose with regard to the assessment of blame for wrongdoing, creates a serious conundrum of political and regulatory accountability. Concludes Sutherland:

> Mr. Daubney's testimony contains at least one very valuable lesson. It points out the intrinsic implausibility of the conception of the job of political aide as being both separable from the minister, yet still a political position…In a system of responsible government, either the chief of staff job must be fully owned by the minister as part of his or her own political personality, or it must be part of the administrative complement of merit or career officials. The chief of staff job cannot be a political force in its own right because there is no way to control the quality of performance.[90]

3.10

Code of Ethics and Other Oversights—Who's Policing the Orphans?

While scandals such as Rivard and Al-Mashat represent very high profile incidents in the annals of exempt staff folly, such visibility with regard to ministerial staff wrongdoing tends to be the exception rather than the rule. More commonly, once errors of judgement, breaches of ethics or outright mischief are discovered, the guilty party is quietly reprimanded or if necessary, dismissed without further fanfare, an action that can be exercised, as we have earlier noted, at the Minister's discretion. Many a potential scandal has been strategically avoided by such an abrupt termination, the complicit silence of the offending party (happy to have avoided either legal consequences or the political and media frenzy) and the ability of senior departmental officials to bury or undo the damage before journalists or opposition catch wind of the incident.[91]

More recently, standards of conduct for public office holders, including exempt staff, have been formalized by the Liberal government with the stated intention of providing an external, more transparent and objective mechanism for policing breaches in conflict of interest and other ethical transgressions. In 1994, the Chrétien administration introduced legislation under the *Parliament of Canada Act* (hereafter referred to as "the Act") to create the position of "Ethics Counsellor" and upgraded the *Conflict of Interest and Post-Employment Code for Public Office Holders* (hereafter referred to as "the Code") to fulfill the Prime Minister's obligation under the Act to establish "ethical principles, rules and obligations for public office holders."[92] The Code is not a statute; rather it was created, and can be amended at any time, by the executive power vested in the Prime Minister. It is nonetheless law, as was confirmed by a 2004 Supreme Court decision where the Court awarded standing and ruled on challenges filed against the then-serving Ethics Counsellor Harold Wilson by Democracy Watch, a Canadian public advocacy group concerned with corporate and government accountability.[93]

According to the Code, exempt staff members are explicitly identified as part of its constituency where it defines "public office holder" to include "a person, other than a public servant, who works on behalf of a Minister of the Crown or a Minister of State."[94] The Code was amended and re-issued in 2003 and in May 2004, revisions to the *Parliament of Canada Act* came into force creating the position of "Ethics Commissioner" as a replacement for the much disparaged "Ethics Counsellor". Later in October of that same year, further revisions to the Code were introduced which, according to a document published by the Privy Council Office, "serve to strengthen the Code, reflect certain administrative practices of the office of the Ethics Commissioner and where, appropriate, harmonize its provisions with the Conflict of Interest Code for Members of the House of Commons" as well cover "numerous housekeeping changes."[95]

On the face of it, the Code marks a significant step forward in formalizing the standards of conduct expected of ministerial staff and in protecting the public from ethical abuses and conflict of interest in their involvement with the affairs of state. It represents one of the few documents to explicitly lay out a set of identifiable and comprehensive expectations of ministerial staff. But is it working? Does it, in practice, provide the sort of mechanisms that will protect the public interest, encourage ethical behaviour and guard against conflict of interest?

Recent events in the spring of 2005 offer some insightful observations into its efficacy. A case in point involves complaints filed with the Ethics Commissioner by the New Democratic Party concerning allegations of wrongdoing by Tim Murphy, the Chief of Staff to Prime Minister Paul Martin. The complaints related to suggestions of ethical impropriety in a secretly-taped conversation between Mr. Murphy and Conservative MP Germant Grewal regarding potential rewards that Mr. Grewal and his wife, also a Conservative Member of Parliament, might receive in return for their defection to the Liberal party days before the House was to decide on a critical vote of confidence. Also at question was a comment by Mr. Murphy that seemed to suggest he could influence the outcome of an ongoing investigation by the Ethics Commissioner into outstanding allegations registered against Mr. Grewal on an unrelated matter.

The Ethics Commissioner, Bernard Shapiro, initially responded to the NDP complaints by refusing to investigate on the grounds that while exempt staff are included in the definition of "public office holders" as defined by both the Code and the Act, the *Parliament of Canada Act* stipulates that his investigations are to be limited to complaints levied against elected officials, specifically Ministers of the Crown, Ministers of State and Parliamentary Secretaries. In his estimation, this provision precludes him from ruling on the activities of unelected officials such as ministerial advisors.

This decision in the Murphy case echoed a similar position Mr. Shapiro had adopted earlier in the year with regard to complaints levied against Ihors Wans, Policy Advisor and later Chief of Staff to former Immigration Minister Judy Sgro. In this case, the Ethics Commissioner had likewise used this interpretation of his mandate to restrict his final rulings exclusively to complaints filed against the Minister. In the Murphy case, Shapiro resisted further calls by the NDP to investigate Mr. Murphy's boss, Prime Minister Paul Martin, stating in a letter to NDP Yvon Godin on June 16, 2005 that he did not "believe there is any need to formally widen the inquiry that I have agreed to undertake to ensure that all active participants in the events under scrutiny be considered."[96] Opposition members were quick to respond. Said NDP Pat Martin:

> Either Mr. Shapiro doesn't understand or is deliberately avoiding the very legitimate question…which is if you can't investigate Tim Murphy, who is the agent of the Prime Minister, he is the eyes, hands and ears and he's the extension of the Prime Minister…he [Mr. Shapiro] should investigate how ethical was it for the Prime Minister — or his agents — to be soliciting the cooperation of another [opposition] MP to alter his vote.[97]

Democracy Watch, a public interest group committed to democratic reform, government accountability and corporate responsibility, was likewise quick to point out the conundrum inherent in the Commissioner's ruling:

> It is true the Ethics Commissioner is only required by the Act to investigate Ministers of the Crown, ministers of state and parliamentary secretaries and rule publicly when a member of the Senate or House of Commons files a complaint backed by evidence (under section 72.08). However, the Code also applies to ministerial staff, and the Ethics Commissioner is clearly the only person who can rule on Code violations by ministerial staff and if he does not do so he is failing to uphold his legal duties as administrator of the Code.[98]

At the time of the completion of this study, the office of the Ethics Commissioner confirmed that there was no investigation of Tim Murphy under way[99] although a formal inquiry was being pursued with regard to the actions of the elected individuals involved, Health Minister Dosanjh and Mr. Grewal. While Mr. Murphy will no doubt be contacted as a witness in the inquiry, a determination on his own ethics in this matter was left to the court of public opinion. At the time of the incident, academics, lawyers and pundits were tellingly divided over whether the Chief of Staff's negotiations were an appropriate or inappropriate part of his job. University of Ottawa Law Professor Edward Ratushny, commenting on whether such "explorations" might contravene Section 119 of the Criminal Code that deals with bribery and influence peddling, was quick to dismiss any suggestion of serious impropriety. "I think it would be a stretch to call this a criminal offence. I think you need some kind of financial benefit, a direct financial benefit being involved, and I mean, let's face it, this kind of horse-trading goes on all the time in politics."[100] His colleague, Law Professor David Mitchell, held a less generous view of events, "This is an issue of, again, a significant erosion in confidence in the institutions of governance of our country. The mere fact that these conversations have occurred is worrisome."[101]

There are also other significant fault lines in the Code with regard to the oversight of ministerial staff. The recent 2004 amendments introduced by the current administration and described as "housekeeping," have created another tantalizing loophole vis-à-vis the scope of the Commissioner's reach. Exempted from all but the most global ethical principles enshrined in Section I of the Code are:

> 1(b) Part-time ministerial appointees who are persons other than public servants who work on average fewer than fifteen hours a week on behalf of a minister of the Crown or a minister of state, including persons working on a contractual or voluntary basis, and part-time Governor in Council appointees, who are not appointed on

> a full-time basis and are not in receipt of an annual salary or benefits from the appointment, are subject only to the Principles set out in Part I and such other compliance measures as may be determined by the head of the organization in question, for whose application that individual is responsible.[107]

In other words, all persons who volunteer their time or who are hired by a Minister on contract to act as political or policy advisors for less than, *on average*, fifteen hours a week are exempted from all of the conflict of interest and declaration provisions found in Sections II and III of the Code.

That a good number of the political confidants and close political allies that represent this cadre of part-time, volunteer or contractual staffers today make their living in those other hours of the week as lobbyists or consultants trying to influence the same government they, on occasion, are hired or invited to advise makes the addition of this amendment a curious and somewhat unsettling development. Media attention was particularly drawn to this practice of private consultants or lobbyists working both sides of the door during the 2003 transition of the Martin administration and is typified by this article entitled, "Top Martin Advisors likely to wield power from the outside", where journalist Anne Dawson of the *Ottawa Citizen* wrote:

> Perhaps the most interesting feature of Paul Martin's Prime Minister's Office will be that two of his top lieutenants are not expected to be part of it. David Herle, a principle partner at Earnscliffe Strategy Group and Terrie O'Leary, former executive assistant to Mr. Martin when he was Finance Minister and most recently Canada's representative to the World Bank, will likely wield their tremendous influence from outside the PMO. The two have been a couple for close to 20 years and have, in that time, made it their top priority to make Mr. Martin Prime Minister of

> Canada...As a key partner at the lucrative Earnscliffe firm, Mr. Herle would take a significant pay cut to take a job with the PMO... Elly Alboim, a former CBC-TV Ottawa bureau chief and another Earnscliffe partner who has worked extensively with Mr. Martin in preparing budgets, is in the came category and, while he is expected to play an instrumental role in the new government, he is expected to so from Earnscliffe.[103]

Despite their "tremendous influence", as the Code now stands, these part-time advisors—providing they work no more than roughly two days a week for a Minister or Prime Minister—are exempt from the conflict of interest and disclosure laws intentionally designed to police such ethical conundrums as are created by consultants working both sides of the fence. At the time of the amendment, when questioned at a press conference regarding the impetus behind it, the then Ethics Counsellor, Harold Wilson, responded by saying that this was simply a formalization of a rule of thumb that he had used all along with regard to ministerial staff.[104]

There is an even more obtuse and untraceable practice that has recently emerged with regard to outside ministerial advisors, perhaps best illustrated by the relationship between Belinda Stronach and one of the Partners in the prominent lobby firm Prospectus Associates, Mark Entwistle. As an acknowledged advisor to Belinda Stronach both before and after her abdication from the Tories to the Liberal Cabinet, Mr. Entwistle is reported to continue to provide assistance to the Minister from outside her ministerial office, but unlike other contracted advisors, his consulting fees are paid personally by Minister Stronach. An excerpt from *The Hill Times*, written at the time of Ms. Stronach's transition, confirms both the private nature of their arrangement as well as the level of political advice that is being provided to the Minister by Mr. Entwistle.

> As for Mark Entwistle, Ms. Stronach's former top advisor who did not work in her Parliamentary office on the Hill, but advised her on political and communications issues and was paid out of her own pocket, is also not likely to work in the Human Resources Minister (sic) and Democratic Renewal Stronach's ministerial office. He, however, will keep his role as an advisor by staying out of the ministerial office. Mr. Entwistle is also expected to play a key role in setting up Ms. Stronach's ministerial office…Mr. Entwistle was one of the few people who knew before Tuesday that Ms. Stronach was crossing the floor to join the Liberal government. He was also part of a small group of individuals who went over to 24 Sussex Drive on Monday, May 17, to have dinner with the Prime Minister.[105]

As a private arrangement, it can be assumed that the parameters of Mr. Entwistle's contract and the number of hours he is employed are not a matter of the public record and one presumes, untraceable by the Ethics Commissioner. While not necessarily a conflict of interest, the advent of "private" ministerial staff creates yet another layer of "intermediary persons" to the already nebulous category that has traditionally existed on Parliament Hill — this one even more far removed from the scrutiny and accountability of Parliament and less accessible to oversight of any kind than regular full-time or even part-time ministerial and prime ministerial advisors.

Some individuals interviewed for this study felt that the growing practice of private consultants and lobbyists being hired by Ministers or the Prime Minister in a professional political advisory capacity on a part-time basis to be potentially more scandalous and dangerous to the integrity of government than anything that might be revealed in the sponsorship scandal. They point to the potential dangers in government policy, including such major initiatives as the Speech from the Throne and the Budget, being formulated, at least in part, outside of the traditional policy process. Among the potential sources of abuse they identify are not only the exemption of these part-time staff from the conflict of interest and disclosure provisions of the Code, but the fact that briefings, documents, drafts and minutes of meetings generated by these contractual staffers remain largely outside of the official government archives, and therefore the institutional memory, of government. They are also well beyond the reach of any *Access to Information* legislation.[106] This practice can come to represent an alternate, parallel policy process even more ungoverned, off-the-record, and unscrutinized than the workings of the regular ministerial office and runs contrary to the values of transparency, openness and accountability that are intended to regulate the policy process. Interestingly, one former Chief of Staff admitted that many departments, recognizing this new trend, had themselves hired the lobby firm employed on a part-time basis to assist the former Finance Minister in the development of his budget. The hope was that by currying the favour of these part-time advisors, these departments would gain an upper hand in the fierce competition to get programs and priorities included in the final budget document.

Whatever the concerns raised over the ethical dangers posed by part-time ministerial staff, the fact remains that there are serious deficiencies in the Code's ability to act as an effective mechanism to govern even full-time ministerial staff behaviour. The Commissioner has no power to sanction. Section 23 of the code under "Failure to Comply" clearly indicates that any action beyond investigation and ruling reverts to discretion of the political level:

> (23) Where the Ethics Commissioner advises that a public office holder is not in compliance with the Code, the public office holder is subject to such appropriate measures as may be determined by the Prime Minister, including, where applicable, discharge or termination of employment.[107]

But as the Tim Murphy issue seems to clearly indicate, the Commissioner himself seems unwilling, and admits to being constitutionally incapable, of pursuing investigations directed specifically at the activities of ministerial staff. One can only conclude based on such evidence that as an effective instrument of ethical oversight with regard to ministerial staff, the Code, as it now stands, is severely flawed.

3.11

"Exempting" the Minister's Staff

Of all the "exemptions" to the *Public Service Employment Act* (PSEA) given to Minister's staff — exemptions principally related to their hiring, firing and pursuit of partisan activities — by far the most controversial is the one that affords priority access into the public service for senior members of a Minister's staff who have served for three consecutive years or more. Specifically, the Treasury Board *Guidelines for Ministers' Offices* states that:

> Persons with a Ministers' Staff priority are entitled to be appointed without competition to any position in the Public Service for which they are qualified, in priority to all other persons except for surplus employees of the Public Service being placed within their own department…and except for employees who are entitled to Leave of Absence priority under section 30 of the Act. The entitlement is for one year from the date the person ceases to be employed in the office of a Minister but ceases on appointment to the Public Service…[108]

This exemption guarantees a ministerial staff member entry into a public service job at a level equivalent to that at which he or she was employed in the Minister's office (i.e., a Chief of Staff would be eligible to become an Assistant Deputy Minister, both positions being at an EX-04 level). This opportunity remains available to them for up to one year after they leave the Ministerial office. Civil servants who might leave their posts to work as exempt staff are also afforded this priority access. In either case, once entitlement has been confirmed, in that the Public Service Commission is satisfied that the candidate has served a Minister for the required period of time or was a public servant immediately prior to their appointment to the Minister's office, that individual can be hired without undergoing the usual merit-based competition required of all other applicants for government positions. It should also be noted that it is not required that this consecutive service be with the same Minister and that a leave-of-absence to work on a election campaign is not considered an interruption in employment, although the time of the leave is not included in the required three-year period.

If the exempt staff member applying to the public service is below the Executive level category, once their entitlement is confirmed, he or she will be put on a priority list circulated to departments. They are thereby eligible for direct appointment into any position for which they are qualified, third in line in priority behind a department's surplus employees or regular employees returning from leaves of absence. More commonly, however, exempt staffers will have already identified an open position and made arrangements directly with the appropriate managers. This direct application to a desired position is both permitted and encouraged by the PSC rules where they state.

> In addition to participating in the PSC's priority inventory and being referred, persons with a Ministers' Staff priority, like all priority persons, may also apply directly on their own to be considered for any job they see advertised or are otherwise aware of being staffed…Departments are obliged to appoint the priority person in advance of others, if they are qualified to perform the duties, just as if the person had referred by the PSC.[109]

The process for appointment becomes a bit more complex when an executive level (EX-01 or higher) member of a Minister's staff—a group now comprised of all Chiefs of Staff as well as directors of communications, legislative affairs and policy—applies for priority placement. Currently, prospective EX applicants must undergo an "assessment of readiness,"[110] an evaluation that utilizes a series of standard assessment tools used by the PSC to determine managerial aptitude. These include a one-day simulation exercise known as SELEX developed by the Personnel Psychology Centre of the PSC; an interview with a board constituted to assess competencies and work experience; a structured reference check; and an official languages proficiency test for those interested in positions in bilingual regions.[111] Once that screening is successfully completed, the staff member's application is sent to the Executive Programs Directorate who "reviews its inventory of priority persons who are EX-ready and recommends to the Commission, following consultation with the department involved, the appointment of any such persons who appear suitable for the position. If accepted, the Commission would appoint the person. As of January 2000, the Commission also requires that the Deputy Minister of the department sign an attestation form at the time of the approval.[112] The new *Public Service Modernization Act* passed in 2003 with various provisions coming into force throughout 2005 delegates further hiring authority and other powers to the Deputy Ministers.[113]

Given the close working relationship between Deputy Ministers and senior ministerial staff, it is not surprising that competent senior advisors who appear to have a vocation for public administration are identified and welcomed into the bureaucratic fold. Likewise, those whose accession to the departments might not be considered an asset also become known. With the greater authority being granted to Deputy Ministers with regard to the hiring of public servants, it is unclear whether Ministers retain any of their previous influence over these matters. While the new legislation is very clear in its emphasis on ridding the public service hiring process of any vestige of political interference, there are those who see the evolution of this discretion from the Minister to the

Deputy Minister as somewhat of an aberration of the democratic system. Former Cabinet Minister John Crosbie, saw nothing wrong in a politician having the ability to exercise the power of political patronage in "the best sense of its use." He argues that patronage still exists in these appointments, but that now it is the unelected Deputy Ministers who control the gates to hiring within the public service and who wield that power, as did their political masters before them, to favour those that they know and like. However, unlike politicians, it may be argued, the Deputy Ministers have not been elected by the people to do so.

3.12

The Exemption: Crucible or Curse?

The original rationale behind the inclusion of this significant perquisite of priority access to the public service for members of a Minister's staff was first articulated in the academic literature by J. R. Mallory, who despite his obvious reservations about the increasing role of Ministers' staff, appears supportive of this "special recognition:"[114]

> No doubt the reason for this curious provision is the recognition that an able man, brought to Ottawa to operate near the centre of power, must have some reasonable expectation of a career if he is to take the risk of moving to the capital. Ministers are transient beings, and it is asking much of a young man to tie his career to a politician with an uncertain future. So the Minister's office has become a backdoor to the public service, untouched by the merit system. That this provision is not wholly bad is attested by the quality of a number of the able civil servants who have found in it the beginning of a long career in the public service.[115]

This historic rationale is in many ways as true today as it was in the 1960s. Given the lack of job security offered by these positions, the employment rights that incumbents forego and the depth of commitment required by the job, there remains a perceived need for some incentive or reward to be offered to those who tough it out for lengthy periods in "the belly of the beast." Many, including Professor Mallory in the 1960s and more recently, others such as Arthur Kroeger, point to the number of excellent public servants who began as ministerial staff and have gone on to very senior and distinguished careers within the departments.

Proponents of this exemption argue that the public service would be foolish to discourage the entry of these individuals into the departments after years of service at the highest levels of power. Treating them as neophytes and insisting that they undergo what might be seen as a demeaning competition process to confirm their competence after years of exalted service might represent a significant deterrent. Their merit has, in effect, been confirmed by the longevity of their service in the Minister's office. In other words, having already been employed on the "inside" for a significant period of time, there is little logic in forcing these assistants to come knocking at the doors of the system. Some question what actually constitutes "merit" in the context of competition for government employment. As one former EA points out, the "merit" concept has been debated for decades in public administration circles all the way back to Whitehall. He points out that these ministerial appointments are not the only ones to escape the formal public service competition process, citing senior appointments to the Privy Council Office, Treasury Board and in many cases, Finance, that are rarely subject to merit-based competition.

Critics, on the other hand, beg to differ. Their objections are based on the perceived elitism of such an entitlement as well as concerns over any potential politicization of the bureaucracy that it might encourage. They argue that if the skills and experience gained in a Minister's office are such a valuable asset, these qualifications will be recognized and work to the advantage of the candidate within the merit-based competition process. They contend that exempt staff with a genuine affinity for public service will still be identified and hired, but that they will come to their new positions fully screened and vetted and with the greater legitimacy and respect born of fair competition. The aura of privilege and patronage suggested by the exemption, they argue, while perhaps acceptable in the 1950s, is no longer consistent with the values of openness, transparency and fairness prevalent in the public service today.

There is also an historic perspective to be considered in this critique. The public service exemption for ministerial staff was created at a time when a Minister's staff comprised only 3 to five people; most of whom played a clerical role, and whose impact on the political impartiality of the public service would be negligible. Loretta O'Connor's research seems to bear this out. She writes: "Prior to 1950, a Minister was only permitted five staff exempted from the provisions of the *Civil Service Act*. They included the private secretary/executive assistant, two stenographers, one messenger and the Minister's personal secretary."[116]

By contrast, the dictates of the *Public Service Employment Act* today preclude the granting of an exemption to clerical personnel on the minister's staff, instead reserving the privilege for only the most senior political levels within the Minister's office. The Act stipulates that:

> Persons with an entitlement under subsection 39(4) of the PSEA are to be appointed to a position in the Public Service "at least equivalent to a private secretary to a deputy head", for which, in the opinion of the Commission, the person is qualified. Thus, in order to qualify for the entitlement under this subsection, the PSC not only looks at time served in the Minister's office, but also at the duties performed and the reporting relationship to the Minister. Persons who do not work at a senior level, whose duties are predominantly administrative or constituency-related, or who have little contact with the Minister are not considered by the PSC to have a priority entitlement.[117]

This exclusion of the more subordinate and administrative elements of a Minister's staff coupled with the sheer number of those in recent cohorts eligible for priority placement no doubt gives greater force to suspicions that this "back door" might serve as a vehicle for partisan bias entering into the senior ranks of the bureaucracy. Indeed a 2002 report commissioned by the Canadian Centre for Management Development (CCMD) that examined this issue of exempt staff priority recommended that this exemption be abolished.

3.13

Practical Applications: Who Is Exercising the Exemption?

Whatever the theoretical arguments over the merit of this political staff exemption, it is interesting to note that for ministerial staff, it represents far less of an enticement than might be expected. Rather than the coveted reward it was meant to bestow, today a career in the public service appears for many to be very much an option of last resort.[118] The opportunity to enter the public service takes more the form of employment insurance in case some more exciting or lucrative opportunity outside of government fails to materialize at the appropriate moment. It is also seen as a reasonable option for those wanting to get on to "the mommy track" or for others who are genuinely disillusioned with the hothouse of partisan politics. Some, it must be said, have a genuine desire to pursue a career in public administration.

As illustrated by the chart below, statistics compiled by the Public Service Commission confirm that only a small percentage, roughly eight percent or an average of 26 individuals out of the more than 300 exempt staff currently employed are actually appointed into the public service in any given year.

Ministers' Staffs Priority Activity: A Numerical / Historical Overview

FISCAL YEAR	NUMBER OF REQUESTS		REGISTRATIONS/ACTIVITY IN PRIORITY SYSTEM		
	Recieved	Entitled	New	Appointed	Expired
2004/05 (election—minority govt)	40	35	34	35	20
2003/04 (Chrétien to Martin)	89	73	64	35	5
2002/03	59	53	24	26	3
2001/02	62	52	52	24	4
2000/01 (re-election—Lib)	44	38	24	22	6
1999/00	35	31	26	17	2
1998/99	37	33	20	20	7

This trend clearly demonstrates that the prevailing exempt staff culture favours an after-life in the private sector. Some return to academia, some resume their professions as lawyers, journalists or communications consultants but more and more, a career as a lobbyist or government relations specialist is seen as the most natural and coveted professional progression for political staff. These are positions where ex-exempt staff feel they can best leverage the contacts and experience they have gained on the Hill into a high paying, high flying career and at the same time continue their close involvement with their partisan allies.[119] Explains one veteran of the lobby game, "Many political staff that join lobby firms see it as an extension of their social life. You'll see them in the bars—they're each other's family. . . . Their first call is always to the minister's staffer to ask 'do you know what's happening on this file?'"[170] Lobby firms allow, and even encourage, their staff to remain actively involved in the partisan political process, a practise that has been viewed with some suspicion by the media and public, but is nonetheless legally condoned and as we have seen earlier, accommodated within the conflict of interest regulations governing former ministerial staff. In other words, the wall between the minister's office and the lobby world remains quite porous. The threat of a spring election in 1995 elicited the following subtitle in *The Hill Times*, "Majority of lobbyists self-admitted politics junkies, many firms offer flexible scheduling to allow associates to go out on the hustings." A paragraph in the article goes on to state:

> Many firms will be also looking at how to arrange work schedules during the election itself, in order to allow staff and associates to take part in the various local and national campaigns that will be underway once the writ is dropped.[171]

Lobbying therefore serves as a logical "next step" in a political advisor's career, removing them either permanently or temporarily from the pressures and demands of the Minister's office, but allowing them to leverage their political contacts and expertise in an environment that both encourages and values such assets.

And what of potential conflict of interest? The one year "cooling off" period imposed on ministerial staff by the *Conflict of Interest and Post-employment Code for Public Office Holders*, a provision which is meant to impose a 12-month period of abstention from involvement in any file with which they have had contact in their role in the Minister's office, again serves up some questionable provisions with regard to exempt staff. The first is identified at the very beginning of the "Post-employment Compliance Measures" where under "Interpretation" it states:

> (24)...for the purposes of this part," public office holder" refers to the same positions subject to Part II, as set out in sections 4, with the exception that ministerial staff and other public office holders as defined under paragraph (b) of the definition of "public office holder" under subsection 4(1) must be designated by their Minister for this Part to apply.

From this provision, we are to understand that a Minister must first take proactive measures to designate their political advisors as eligible under this Section of the post-employment provisions. Should such steps be taken, the Code goes on to stipulate that staff advise the Commissioner and/or their Minister in the event that they accept an outside offer of employment as well as other conditions essentially restricting for a period of one year their involvement with anyone or any file with which they have had contact in their official capacity.[122] In practice, this post-employment Code can be virtually ignored as it has never been actively policed.[123] Complaints against exempt staff infractions of the Code, as noted earlier, are not currently pursued. Even if they were, once an advisor has exited the ministerial office, the doctrine of ministerial responsibility for staff wrongdoing becomes all the more tenuous in terms of redress. One has to seriously question what sanction a Minister or the Prime Minister could possibly employ once the aide is no longer an employee of the government. "Discharge or termination of employment" holds little threat to someone who has already left the system. While some of the larger firms note the dates and ensure voluntary compliance,[124] given the lax enforcement and the unlikelihood of investigation or sanction, most discreetly ignore the restrictions.

By contrast, those staff that choose to become departmental employees are well aware that any ongoing contact and camaraderie with their former political allies would be viewed as inappropriate. Further, such close ties to the political level can become a source of suspicion and resentment with their superiors. To accept a public service appointment essentially removes them from the social and professional sphere in which they formerly operated, plucking them from the privileged and elitist position they occupied close to the levers of power and depositing them down into the bowels of a bureaucracy that will show them no further deference. Small wonder then, that many exempt staff prefer to move to a career where they can preserve, and even exploit their former network and be recognized and admired for their political access, rather than to a career where they have to operate in denial of it.

The public service exemption represents a welcome and respectable option for those with a genuine interest in civil service but to most, it is a safety net, a viable alternative to unemployment if no private sector work can be found or alternatively, a safe place to park their careers while they shift their focus to family and take advantage of the generous parental and other benefits on offer. Among those ex-ministerial staff that choose the departmental route, few if any, it appears, enter the bureaucracy with a missionary zeal to bend the public service to their political ends; those that succeed best in an after-life in the public service do so because they are able to disassociate their political past from their bureaucratic present, keeping only the skills and judgement that they have honed in their years on the Hill and transforming that expertise into patterns that conform with the expectations of a political neutral public service.

3.14

Dubious Exemptions: The Case of Pierre Tremblay and Isabelle Roy

And then there are the exceptions that illuminate with glaring clarity the danger represented by the existence of priority access for ministerial staff into the public service. In examining the entrails of two dubious appointments made under this provision in 1999, it is important to note that since that time, several measures have been implemented that might have served to impede such appointments. It is beyond the scope of this paper to speculate as to whether they, like the checks that were in place at the time of these events, might also have succumbed to the unique confluence of political events, pressures and personalities that resulted in the confirmation of these dubious appointments; suffice to say that the system that condoned these questionable transitions from the political to the departmental realm has, at least at the executive (EX) level, undergone substantial changes since that time. The provisions that allow ministerial staff priority access to the public service, as we know, have not.

One other fact remains relevant to this discussion: it is that one of the main subjects in this matter is now deceased. Pierre Tremblay passed away in August of 2005 shortly before the Inquiry began its examination of witnesses, and he was therefore unable to offer his version of events. My interviews with some of his former colleagues as well as with Jean-Claude Demers,[175] the author of the "Demers Report" who interviewed him in the context of his investigations, indicate that Pierre Tremblay was a man of many attributes as well as failings. He was described as "intelligent, competent" and "no fool" but also as a man who indulged in personal excess and revelled in his "control of the cookie jar." By all accounts, he was highly partisan and fiercely loyal to his political masters and had cultivated a reputation of "instant response" to the wishes and direction of the PMO. His former boss, Alfonso Gagliano, while describing him as an "impatient"[176] man, lauded his organizational skills, remembering him as a "computer freak"[177] well known for his penchant for detailed list making. This description of his organizational and record-keeping skills seems strangely at odds with the testimony of his colleague, Isabelle Roy, where she recalls Mr. Tremblay instructing her not to keep any evidence surrounding sponsorship files,[178] as well as the conclusion of the Demers Report panel which stated that the 19 sponsorship files handled by Mr. Tremblay in his capacity as Director

General at CCSB "constitute very serious negligence that calls for commensurate disciplinary action."[170] It is, however, the fact and process of their appointments, rather than the details of their performance, that is of primary interest to this study.

Isabelle Roy's profile in many respects mirrors that of the classic ministerial aide. The daughter of a Quebec Member of Parliament, she no doubt grew up in a partisan milieu but typical of many children of politicians, never exhibited much interest in politics, instead pursuing her post-secondary studies in business. That lack of interest notwithstanding, following her graduation from the University of Ottawa with a degree in Commerce, Isabelle began a summer job in the office of another francophone Member of Parliament, Eugene Bellemare. Although not explicit in her testimony, it is likely that the position was arranged for her through her father as a favour from an obliging colleague. Once on the Hill, Roy would inevitably come into contact with many familiar faces and friends of her father's, among them, Pierre Tremblay. Tremblay was also a recent graduate of the University of Ottawa, having completed a Doctorate in Psychology and had been hired in the early 90s to work for then Whip, Jean-Pierre Gauthier. According to one former colleague, the purpose of his first job was to observe caucus members during meetings and, using his expertise in psychology, identify the informal leaders in the group. These individuals would then be the focus of special attention by the Whip in an effort to utilize their natural leadership skills to influence other members of caucus.

It was through Pierre Tremblay that Isabelle Roy, at the end of her 1994 summer job, learned of an opening in the Whip's office. After a meeting with Tremblay, she was hired as the Special Assistant responsible for the Minister's appointment book. Tremblay's career by this time was in lockstep with Alfonso Gagliano's. Having first worked for him when Gagliano served as Whip, Tremblay then followed him to the office of Deputy House Leader. When rumours began circulating in 1996 that

Gagliano was in line for a ministry appointment, Roy let her friend Pierre Tremblay know that she was looking for a new challenge and would be happy to again join Gagliano's staff. With Gagliano's accession to the Labour portfolio, Roy was duly appointed by the Minister's new Executive Assistant, Pierre Tremblay, as the Special Assistant responsible for office management. One year later, when Minister Gagliano was shuffled to replace Diane Marleau as Minister of Public Works and Government Services, Tremblay and Roy moved with him.

The pattern of relationships illustrated by these two careers is not atypical of many of those found on Parliament Hill — that is to say, exempt staff members are hired through family connections or political acquaintances; friendships and alliances are forged and mentorship relationships established. Fierce two-way loyalties among Ministers and their staff are common in the intense and high-powered atmosphere that pervades the Hill, and while loyalty is in many ways an essential ingredient to the smooth operations of the ministerial office, it can also lead to a certain element of blind trust.

Testimony at the Sponsorship Inquiry indicates that it was not long after Isabelle Roy arrived in Gagliano's office that she was entrusted by Pierre Tremblay as the sole custodian of the sponsorship files and that her involvement in it was largely administrative. Her testimony indicates that she had a direct and positive working relationship with the PWGSC employees working for Mr. Guité, and that she never raised any concerns over the manner in which the program was being administered. Nor did she question or object to Pierre Tremblay's request that all records related to the sponsorship program remain outside of the standard DOMUS system that catalogued and tracked all other ministerial and departmental documents. His instruction not to keep evidence of any recommendations or decisions made within the Minister's office was apparently accepted by Roy as reasonable given the politically-sensitive nature of the file.

Interestingly, she also confirmed in her testimony that by not inputting sponsorship requests and related documents into the standard DOMUS system, it allowed the Minister's office to bypass the oversight of the Deputy Minister. Ranald Quail's office could therefore not monitor the process surrounding any of the decisions or input into the program made by the Minister's staff, and presumably was left to rely only on the reports supplied by Tremblay, Guité or the Minister with regard to the allocation of these substantial amounts of public funds.

This minimalist tendency with regard to record keeping is not restricted to this one sponsorship program incident and in fact is becoming a very common and disturbing trend in many ministerial offices and government departments. It is almost entirely a result of the *Access to Information* legislation which lays open to public or political scrutiny much of the information that transpires between a ministerial office and a department. It has spawned the use of purge-able "sticky notes" and other disposable means to record important decisions, comments or instructions, a whole range of creative efforts to circumvent the normal paper management and archival processes, and a minimalist approach to the use of agendas or minutes to record the details of meetings. Not only are these measures intended to frustrate the objective of the *Access to Information Act* with regard to openness and transparency, they also ensure that no paper trail exists to later substantiate or refute verbal recollections. In other words, the written institutional memory is effectively silenced. In the case of the Sponsorship Program, there appears to be little doubt that the efforts to "leave no trace" were done with a direct intent to bypass the regular archival processes, the systematic oversight of the Deputy Minister and any forensic analysis that might later be undertaken with regard to the program.

On January 22, 1999, Pierre Tremblay applied through the appropriate PSC channels for approval to move from his position in the Minister's office to the Communications Coordination Services Branch (CCSB).

We now know that this request was made in order to facilitate a smooth transition orchestrated "in-house" between Tremblay and Chuck Guité, who was expected to retire as head of the Sponsorship program in the following months. Pierre Tremblay's appointment as Director General, Strategic Communications Coordination was confirmed February 17, 1999 at the Ex-02 level. The steps undertaken to approve this appointment, according to a Statement of Evidence submitted to the Inquiry by the PSC were as follows:

- January 22, 1999—PSC receives a request from PWGSC to appoint Mr. Pierre Tremblay as a legislative priority to the position of Director General, Strategic Communications Coordination;
- January 22,1999—confirmation given by PSC that Mr. Tremblay meets the 3 years service requirement to qualify for exemption from competition under subsection 39(4) of the PSEA;
- January 28, 1999—PSC approves a resourcing strategy to appoint Mr. Tremblay as Mr. Guité's replacement, subject to an interview and standard "EX" competency test;
- February 12, 1999—Mr. Tremblay undergoes a standard simulation exercise designed to determine managerial competency at the EX level. The overall result was "Quite effective";
- February 12, 1999—Mr. Tremblay is interviewed by a board consisting of Chuck Guité, a representative from PCO and a PSC resourcing consultant. Their conclusion was that Mr. Tremblay was qualified to be appointed to the position; and,
- February 17, 1999—Mr. Tremblay is appointed.[130]

In April of that year, Isabelle Roy, as she had done so often in her career in the past, followed Pierre Tremblay. She too, exercised her exempt staff priority access to leave the Minister's office and move to CCSB to work on the Sponsorship Program from the departmental side. Her appointment, being below the EX level, required only that PSC confirm her eligibility for the exemption, in other words, ascertain that she had been employed in a ministerial office at a sufficiently senior capacity for three years, and that Pierre Tremblay as Director General of the program agree to her hiring. The two colleagues were thereby once again re-united, this time on the other side of the political/bureaucratic divide.

A number of serious issues surrounding this priority access for exempt staff are raised obviously by these appointments. One presumes that the more rigorous approval process that was established at that time to scrutinize the appointment of EX-level exempt staff into the public service was designed to ensure that those entering these positions from a Minister's office would, in fact, have the managerial skills, expertise and capacity to undertake the work involved, that they are not simply "louts" that the Minister is trying to offload onto the bureaucracy. The findings of the 2000 internal audit, which identify serious problems in the administration of the Sponsorship Program under Tremblay's leadership, raises questions about the true ability of that assessment system to accurately determine managerial competency. It is known that at the time of this assessment Mr. Tremblay suffered from an alcohol addiction. His penchant for long lunches at the Press Club or other Ottawa establishments was well known in official circles.[131] In fact, Ms. Roy testified at the Inquiry that when she joined Mr. Tremblay at CCSB a few months after his appointment, she was left to manage the administration of the program largely on her own due to Mr. Tremblay's consistent absences in the afternoons due to his drinking problem.[132] How is it that this addiction was not detected during the psychological evaluation process? Was proper due diligence exercised by the PSC in exploring his career history and references or was the assessment process so flawed as to allow such a serious health issue, one unquestionably germane to the issue of responsible management, to go undetected?

Some clue as to the apparent negligence that must have played a role in this particular evaluation is indicated by a letter that was circulated by the PSC to the Heads of Departmental Personnel one year after this appointment, dated January 19, 2000. In referring to this document in its statement of evidence to the Inquiry, the PSC states:

> ...Prior to that time (before January 19, 2000) if there was a specific position for which a department wanted to consider an individual with a ministerial priority entitlement, a selection board was convened for that specific position...except that, while the simulation exercise was required, reference checks were not systematically done when one or more of the selection board members had sufficient and favourable knowledge of the individual performance history.[111]

In the case of Pierre Tremblay, his close friend and departmental counterpart Chuck Guité, served as the Department Representative on that selection board and no doubt vouched for his character and competence. It can be assumed by the outcome that no further reference checks were undertaken and that his appointment was made solely on the strength of Mr. Guité's recommendation.

Competencies aside, it may also be presumed that, at the time, there was in place some form of systemic "check" on the appointment of ministerial staff with priority entitlement to a particular function to ensure that it would not constitute any form of politicization of that program or department—that someone with the authority to intervene sniffs the air in these cases to ensure that there is no hint of political-departmental collusion in the appointment. In this instance, any safeguards that were in place to that effect clearly failed. While it is known that officials at the time were "uncomfortable" with Pierre Tremblay's appointment, not only was it approved, the process was accomplished with what can only be seen as uncharacteristic speed and efficiency. The whole adjudication from Mr. Tremblay's first official inquiry regarding his eligibility on January 22, 1999 to the confirmation of his appointment on February 19 of that year was accomplished in less than four weeks. Why did the "discomfort" not translate into action?

The answer may again lie in the fact that Mr. Tremblay had succeeded in all the structural tests and interviews that might have given the PSC solid grounds to refuse the appointment. In the absence of that rationale, there are no specific regulations that would restrict exempt staff from moving into departments or programs with which they were involved at a political level. In fact, as noted earlier, the identification of an appropriate position by the candidate is tacitly encouraged by the legislation, and it can be presumed that the majority of their contacts would be within the department associated with their ministry. There remains nothing other than the discretionary powers of the Commissioners of the PSC to act as a brake on questionable political appointments, and in this case, they clearly failed to exercise that discretion.

The Commissioners were not the only ones who had the authority to block this appointment. The PCO document *Guidance for Deputy Ministers* states:

> Responsibilities relating to personnel management in the public service, including appointment, employer/employee relations, and the organization of departments, are assigned to the deputy head directly rather than through the Minister. Both the Treasury Board and the Public Service Commission delegate authorities related to human resources management to Deputy Ministers directly.[134]

Such authority raises the question of why Ranald Quail, who as a longstanding colleague of Mr. Tremblay's must have been aware of both his close political affiliation with the management of the Sponsorship Program and his medical and lifestyle challenges, would have approved his appointment as Mr. Guité's designated successor? Did he simply accept the PSC's assessment of Mr. Tremblay's competence and rubber stamp his approval? Was he instructed by either his Minister or a member of the PMO, who he was aware had a significant interest in this program, to approve this succession? If he was acting at the request of either his Minister or the PMO and was uncomfortable with the optics of this transition, why did he not take his concerns to the Clerk? Or did he simply see no obvious or significant reason to restrict or obstruct this appointment? And finally, did the reunification of Isabelle Roy with Mr. Tremblay on the departmental side of the Sponsorship Program only three months after Mr. Tremblay's appointment not again raise any concerns in the Deputy Minister's mind over the potential politicization of this program's management?

In contemplating the factors that may have influenced Ranald Quail's actions at the time, one former senior mandarin offered the following explanation: "Look—as Deputy Minister, you have a part of your department that has been a political brothel for decades. How much of your virginity are you going to give up trying to straighten it out?" This former Deputy suspects that Ranald Quail felt he had little choice but to consent to Pierre Tremblay's succession to Charles Guité. "Are you going to put in a Sunday school teacher as the official to run the brothel? You might as well have someone there who is already in it." Having said that, he suspects that Ranald Quail must now dreadfully regret having stood aside back then and his decision not to consult with the Clerk with regard to both these appointments and the irregularities that were coming to light at that time with regard to the Sponsorship Program.

3.15

The Sponsorship Scandal: Partisan and Structural Politicization

There is another theory on the motivations that allowed so many reasonable and responsible people to "step back" and if not condone, then at least look the other way, when it came to events surrounding the sponsorship scandal. In his paper entitled, "L'Affair Groupaction: un cas de politisation de la Fonction publique federal?"[135] Denis Saint-Martin suggests that the sponsorship scandal illustrates two separate types of politicization within the public service. The first is demonstrated by the appointment of Pierre Tremblay into the post at Communications Canada, an appointment, he notes, made possible through the exemption found in Section 39 of the PSEA. This represents a relatively classic case of partisan-style politicization where an individual close to the party in power is integrated into the permanent ranks of the public service in order to influence the administration in favour of a political agenda.

The second form of politicization is characterized by the words and actions of Charles Guité. It is what Professor Saint-Martin describes as a structural bias and represents a more subtle and complex phenomenon. It embodies the notion that the public service is not politically neutral in the face of threats to the federal order: that when it was faced with the potential dissolution of the country as indicated by the close results of the 1995 referendum, there were those who felt justified in contravening the rules in so much as it was being done in the interest of preserving the state. In other words, they felt that the ends, did, in fact, justify the means. While Saint-Martin does not see this as a legitimate excuse for what occurred in the sponsorship scandal, he does believe it provides a context that explains why so many in the public service were willing to step back and ignore obvious breaches in contracting procedures and why others felt legitimate in breaking them in the first place.

In his critique of the partisan politicization made possible through the ministerial staff exemption, Mr. Saint-Martin recounts many of the traditional objections raised by those opposed to this rule: that ministerial assistants are by nature partisan operatives and are unable to achieve the level of political neutrality required of public servants; that their appointment through this "backdoor" amounts to a political patronage and is offensive to the principles of openness, transparency, and merit meant to govern appointments within the public service; that this form of politicization by the party in power can be used as an instrument of political control to influence the behaviour of administrators insomuch as the appointed managers share a political ideology and solidarity with the government in power.

In the case of Pierre Tremblay, Mr. Saint-Martin concludes that the exemption rule served to fulfil this latter objective, that is to say, that Mr. Tremblay was appointed to ensure the availability of an administrator who shared with the elected government a solidarity and ideology and through whom the political arm of government could impose its control on the activities of the department. In this specific case, through the appointment of Mr. Tremblay, the government was assured that it would be "business as usual" at the Sponsorship Program and that no "Sunday school teacher" would accede to the post and upset the status quo that had been established during the Guité administration.

Structural politicization follows a slightly different and more subtle route within the bureaucracy. It is manifest in an ideological persuasion that sees as the bureaucracy's ultimate objective the preservation of the Canadian state. Saint-Martin traces the provenance of this form of politicization to the efforts by the Trudeau administration to create a modern and bilingual public service as a means to forge greater social cohesion and national unity in Canada. Saint-Martin argues that this move to bilingualism as a measure to fight the separatist cause has served to enshrine as part of the "institutional genetic code"[136] of the public service the obligation to promote and defend national unity. He suggests that this imperative is at odds with the principal of political neutrality that demands public servants have no such political disposition and argues as proof of its existence the fact that when a situation such as the Quebec referendum arises, the public service is not neutral to its outcome. Rather, it is institutionally predisposed to fight against such threats and as such, the bureaucrats who espouse these values are "politicized". While Saint-Martin concedes that this type of polarization is qualitatively different from that of partisan politicization where individuals within the bureaucracy might be aligned with party A or B, he nonetheless argues that this does constitute an adherence to a certain type of political regime and, as such, represents an abrogation of political neutrality.

In his thesis of structural politicization, Professor Saint-Martin is quick to point out that this in and of itself was not the cause of the mismanagement within the Sponsorship Program. It does, however, serve to explain why, at a certain moment in time, a public servant would be willing to transgress the rules of regularity and probity in order to fight against those who he or she perceives to be a threat to the regime that they feel obligated to defend. This explanation also illustrates the importance of a point made earlier in this study by Tony Macerollo when he identified the importance of political staff and the department actually defining what they mean by the term "political" in an effort to draw a clear distinction in the respective roles of the two sides. While political advice of a strictly partisan nature is easy to determine (i.e., we do not control that Committee; cancel that and we might lose our seat in the next election, etc.), it is much harder to draw the line and respect the roles when the issue revolves around a much broader and more pervasive political objective such as fighting the separatist cause.

One is reminded by Saint-Martin's observations of the rationalization given by Chuck Guité in his testimony both before the Public Accounts Committee and at the Sponsorship Inquiry when he repeatedly reiterated that this was "a war" they were fighting at that time. If rules got broken and lines crossed, it was done in support of a greater cause. Any negative repercussions that might have occurred were merely collateral damage, their significance greatly outweighed by the importance of winning the larger fight. When the sponsorship scandal is assessed within this context, the willingness of so many to "step back" and not interfere in relationships, activities and appointments that were clearly in contravention of the standard rules of government propriety becomes slightly more understandable.

4 What Can Be Learned?

4.1

Observations and Conclusions

Perhaps the most honest conclusion that can be drawn following a somewhat exhaustive review of the role of exempt staff in contemporary Canadian government is that there are no absolute truths to be found in the analysis of any aspect of the role and practice of this function, only shades of truth. If my sources are correct, roughly half the time these supporting political roles are carried out in a competent and capable fashion; the incumbents act appropriately with respect to long-standing, if somewhat ill-defined, conventions, and exercise sound and constructive political judgment in the execution of their duties and their relationships with the department. The other half of the time, they don't. Likewise, there remains no absolute consensus, in theory or in practice, either within or outside of government, as to what constitutes the appropriate role of exempt staff in the policy development process. After decades of various attempts by the political centre to wrest control of policy from the bureaucracy, there are still those who maintain that the active involvement of exempt staff in this capacity is illegitimate, inappropriate and sometimes dangerous. Proponents, on the other hand, persist in their belief that an independent policy capacity in the Minister's office is the politician's best defence against the power of an obstinate and self-interested bureaucracy—that democracy demands this direction from its elected representatives; that the political tail should indeed wag the departmental dog.

Perhaps of even greater importance is the question of what constitutes appropriate "political input" into the management of government programs. Should the Minister and his or her staff or members of the PMO be key players in determining the allocation of program funding, make "suggestions" or have direct relationships with companies vying for government contracts? Is "putting in a good word" with the department an appropriate political activity or undue influence? There is a line to be crossed but little consensus, it appears, on the exact location of that line.

To the issue of whether political staff give, or attempt to give, direction to departmental officials, one can only conclude that the practice is subtle, reasonably pervasive, and in many instances, a practical necessity. Much of it can arise in the context of regular collaborative interaction between the ministerial office and the department and, as such, is difficult to categorize specifically as "direction". Likewise, the various semantics that are used by ministerial advisors to code their wishes in language more consistent with the PCO guideline, as testimony at the Sponsorship Inquiry attests, does not take away from the fact that these "suggestions", "opinions" and "input" are often intended as instruction and understood by departmental officials to be so. Having said this, I found nothing in my conversations to indicate that the majority of these interactions or "directions" were commonly intended for corrupt purposes or that they substantively misrepresented the general wishes of the Minister. How direction from the Minister's office is received in the department largely depends on the personal reputation and credibility of the exempt staff in question. In the day to day workings of government, the bureaucracy appears to be fairly resilient to attempts by rogue political staff to circumvent the rules of regularity and sound financial management as well as creative in their efforts to ensure that the wishes of the ministerial office are carried out "honourably". In that sense, any serious impropriety and complicity on the part of the bureaucracy noted by the Sponsorship Program appears to be an aberration, rather than the rule. As Harry Swain noted, "the system largely works in a creaky sort of way."

Having said this, there is no question that the rules governing the relationship between ministerial or PMO staff and the public service are woefully inadequate to the practical realities of the modern day political office. There is often good reason for ministerial staff, in their capacity as proxies for their Minister, to make decisions and give direction related to matters too menial to warrant the Minister's personal attention. The existing guideline does not take into account the growing authority of the Chiefs of Staff, nor the tremendous power wielded by senior PMO officials. It has yet to come to grips with the considerable and growing sphere of influence and involvement of exempt staff in the machinery of modern day government and reconcile that with the relative dearth of oversight brought to bear on their activities. Neither has the black hole of accountability they represent been adequately addressed. The growing tendency of Ministers to deny any responsibility or ministerial accountability for the actions of their exempt staff, as has been evidenced by the Al-Mashat, Sponsorship and Sgro scandals, leaves this "intermediary class of person" as a virtual sinkhole in the regulatory system. Either Ministers must be brought to recognize their responsibility—to "own" the actions of their staff in their capacity as their "proxies"—or political staff must be found some constitutional role and protection that would allow them to take ownership and be accountable for their actions in their own right. Certainly the former appears to be the least complicated way forward.

The question of the appropriateness of the ministerial staff exemption that affords seasoned political advisors priority access into the public service remains a difficult one. On balance, I would say that few of those I interviewed felt this did, in fact, pose a serious threat to the political neutrality of the bureaucracy, although some were vehemently opposed to the elitism and sense of entitlement this privilege represents. Although it was recognized that the potential for abuse within this system can exist if Deputy Ministers or other delegated authorities within the departments and the PSC do not exercise due diligence with regard to senior appointments, for the most part, there seemed to be limited passion for the abolition of this practice.

Nonetheless, I do find Denis Saint-Martin's thesis on this subject somewhat compelling, particularly with regard to his thoughts on how a "structural bias" within the public service, one that holds the defence of national unity as an overriding priority, could have played a significant role in the complicity of public servants in the wrongdoings associated with the sponsorship scandal. It represents one of the more plausible explanations as to why so many within PWGSC and elsewhere in the bureaucracy chose to "step back" in the face of such obvious financial irregularity and questionable public service appointments. While it raises serious and legitimate questions with regard to the larger "political" neutrality of the public service, what is important to this discussion is not that the ministerial staff exemption exists, but that this structural bias within the public service might have allowed that privilege to be abused—that the "checks" supposedly built into the system at the PSC and senior departmental levels not only did not work, but failed on several critical counts. Had Mr. Tremblay and Isabelle Roy applied for their respective positions without the exemption and participated in the regular competitive process, might the system still have accommodated their entry? My suspicion is that the answer to that question would be "yes."

The *Conflict of Interest and Post-employment Code for Public Office Holders*, as a public safeguard against conflict of interest or unethical behaviour on the part of exempt staff, has proven to be in both construction and practice, completely ineffective. The current Ethics Commissioner's interpretation of his mandate with regard to his inability to investigate complaints against exempt staff as well as his unwillingness to proactively police the conflict of interest provisions of the Code renders this legislation useless as an instrument of either prevention or sanction with regard to ethical abuse. The recent amendment to the Code that authorizes the exemption of part-time ministerial aides from the all but the first section of the Code represents a further diminishment of its effectiveness. While I was reminded by one prominent lobbyist of Minister Carolyn Bennett's motto to "never attribute to conspiracy what can be accomplished through chaos" with regard to any subversive intentions on the part of the current administration to protect political supporters and allies through this amendment, it does nonetheless appear to effectively remove from even the admittedly ineffectual supervision of the Ethics Commissioner any jurisdiction over the growing number of political operatives who divide their professional time between advising Ministers of the Crown and lobbying them. In addition, the apparently growing practice by Ministers of using "private" part-time political staff paid for by the public purse (or worse, their own resources) and operating largely outside of the conventional boundaries of the ministerial office looms as one more issue ripe for further exploration.

4.2

A Possible Way Forward

It is painfully obvious from many perspectives—theoretical, practical, institutional, constitutional, moral, academic and historic—that the role of ministerial staff continues to languish in a somewhat indefinable netherland. It can claim legitimacy neither as a descendant of Westminster theory nor as a whelp of the Canadian constitution, and as a result, convention has to a large degree dictated the terms of its practice. The doctrine of ministerial accountability, which should by rights provide a constitutional backstop to the role, can be, as we have seen, a fickle and somewhat malleable commodity. To further complicate matters, the role is collectively and individually undergoing constant reincarnation. Not only do incoming regimes regularly try to impose new titles, authorities, duties and, occasionally, constraints on the role, most incumbents arrive with no floor plan in hand and forge their own approach to the management of their duties based on a combination of energy, instinct, innovation and desperation. No comprehensive manual exists for a new administration on the appropriate workings of a ministerial office. It is a wheel that is subject to constant re-invention and yet, as our research has indicated, the path of the circle remains surprisingly constant.

In flailing about for plausible recommendations appropriate to this largely ungoverned and possibly ungovernable phalanx of statutory orphans, one is reminded that the idiosyncratic and culturally variable nature of Ministers' offices and government administrations makes it difficult and in some ways, undesirable, to cast in stone any prescription. However, a few points are clear:

- some consensus must be reached with regard to the accountability of Ministers for the actions of their political staff; the doctrine of ministerial responsibility either has to be fully recognized and accepted by Ministers vis-à-vis the actions or inactions of their staff or some new mechanism of accountability needs to be created to address the deep abyss into which this issue has repeatedly fallen since the 1980s;

- a more robust body of non-partisan research on the actual day-to-day workings of the ministerial office and PMO should be assembled as a resource for political parties in their efforts to provide guidance to Ministers in the selection of appropriate candidates, in developing a Minister's own knowledge of how to use exempt staff most effectively and to assist transition teams in their orientation of new ministerial staff and the development of ongoing in-house training;

- the current *Conflict of Interest and Post-employment Code for Public Office Holders* and the *Parliament of Canada Act* must be revisited with regard to the Ethics Commissioner's jurisdiction over ministerial staff; the regulations involving full-time and part-time staff should be harmonized to ensure a consistent set of rules applies to all advisors afforded privileged access to the affairs of state; greater scrutiny of incoming and outgoing staff with regard to pre- or post-employment lobbying activities must be imposed and compliance enforced with appropriate oversight and sanction;

- an examination of the PCO's *Guidelines for Ministers and Deputy Ministers* and the Treasury Board's *Guidelines for Ministers* should be undertaken with regard to the policy role of ministerial staff to determine which, if any, of the provisions in the two documents might require philosophical and/or technical reconciliation; and,

- upon confirmation of their hiring, exempt staff should be required to undergo a one day seminar or similar exercise delivered by Treasury Board that would include in its curriculum the *Access to Information Act* and the *Conflict of Interest and Post-employment Code for Public Office Holders*, as well as an overview of any other rules, regulations or policies related to ministerial-departmental authority, the management of ministerial documents and correspondence, archives, financial regulations, use of the signature machine, leaves-of-absence for political campaigns, etc., by which political advisors are bound in the performance of their professional duties. This "certification" would ensure, at the very minimum, universal exposure to these rules, policies and conventions, if not necessarily compliance with them.

Other jurisdictions in the Commonwealth, including Scotland, New Zealand and the UK, have grappled with many of the same type of incidents and issues as Canada with regard to political advisors, and most have set in place a far more comprehensive set of policies and guidelines for ministerial staff than are to be found here. Currently, the UK is considering recommendations put forth in a Report by the Committee on Standards in Public Life that proposes a much more statutory approach to regulating political advisers. Their recommendations include the creation of a separate category of public servant to distinguish this group as distinct and separate from regular public servants. Further, the report recommends setting out in primary legislation, the parameters of the adviser/civil service relationship, amendments to the Ministerial Code governing the accountability of Ministers for the management and discipline of their staff, contracting practices for advisers and requirements for unpaid advisers to follow the UK "Code of Conduct for Special Advisers." Although the evolution of independent political advisers is a relatively new phenomenon in Britain compared with Canada—ministerial staff at Whitehall having normally been drawn from the permanent Civil Service—it is evident that they are currently far more advanced in their thinking on this issue. A "Code of Conduct for Special Advisers" has already been developed to address the specific circumstances of this unique group of ministerial operatives. The absence of such direct guidance and oversight in Canada seems to suggest a lack of political will, or perhaps political opportunity, to define through any regulatory or legislative means the role of these ministerial appointees, and thus, they remain as statutory orphans in an otherwise highly regulated and scrutinized system. Needless to say, the Sponsorship Inquiry might offer just such an occasion—the politically correct moment to enshrine in statutory law a clear and comprehensive set of standards for political staff drawn from all of the disparate guidelines, codes and conventions that currently exist and supported by the appropriate mechanisms for reporting, oversight and sanction. Such legislation would no doubt help bridge the chasm in the bureaucratic/political divide into which ministerial staff regularly slip and clarify for all involved any inconsistencies that currently exist with regard to the rules and accountabilities by which these individuals are governed.

While legislation would certainly bring focus to these issues, there are other means by which the role of political advisor could be constructively influenced. Practitioners I interviewed from both sides of the ministerial staff door were unanimous in their support for any efforts that could be made to improve the calibre of ministerial staff and ensure that upon hiring, these advisors were offered a consistent level of orientation and professional training commensurate with the serious level of responsibilities that they hold.

In searching for possible precedents to support such recommendations, the most appropriate and relevant model I have uncovered to date is an American initiative entitled, "The White House Interview Program". This enterprise is primarily funded by a non-partisan charitable foundation, the Pew Charitable Trusts, and is designed to collect comprehensive and comparable information on the role of White House staff going back six administrations. This significant task is being accomplished through interviews with 75 former political staff members and supplemented by materials from presidential libraries and other secondary sources. I was struck by the logic of their approach: "Rather, than tell the new group how they should organize the White House, we will provide them with information on how it has been done in the past, and then describe the outcomes."[137] Upon election, transition teams can access this non-partisan "institutional memory" and use that body of research to determine job descriptions, management models and best practices that are most appropriate to their needs. Over time, the existence of this data will also encourage political parties and research bureaus, academic institutes and public policy think tanks to accrue a valuable bank of analysis and insight into this important function.

The "White House Interview Program" appears to be an eminently reasonable and useful approach for supporting a function that, by its nature, has little institutional memory. The depth of historic research, dating back six administrations, and the non-partisan nature of the program's sponsor ensures that the information collected will be available and accessible to any incoming political administration, regardless of partisan stripe. Through the collection of a broad range of political anecdotes and personal observations, the research itself becomes the "mentor". It avoids the rigid "prescriptive-ness" that might be found in a manual or policy generated by a central agency—

documents likely to be held in suspicion or rejected by new incumbents as a either the creation of their predecessors or the wishful thinking of a self-interested bureaucracy. Rather it allows each incoming administration to draw their own conclusions from their review and analysis of the historic records and to customize their approach to the role based on the successes and failures of previous incumbents.

The research gathered for the White House program has been authored by leading White House academics into a series of "Reports" that reveal a remarkable candidness in addressing some of the critical questions surrounding life in political office. An example of some of the headings found in Chapter 1, Report No. 6 entitled, "The White House World Start Up, Organization and the Pressures of Work Life" illustrates the scope of these investigations:

Forces Working Against a Smooth Transition into the White House

- It takes Time to Appreciate the Place of Staff
- The White House as an Artificial Construct
- Discovering Knowledgeable Insiders
- Coming In Tired
- Early Mistakes Cost Valuable Energy

A similar project undertaken in Canada, possibly under the patronage of the Treasury Board (suggested by one former Deputy Minister as being politically neutral in the sense that "all parties hate it equally") or, more preferably, some notably non-partisan charitable foundation or think-tank, would serve as a remarkable reference tool for incoming political staff and bureaucrats alike. The patterns of "best practices" that would no doubt emerge spontaneously from this research would greatly assist new Chiefs of Staff in establishing administrative policies and practices based on sound research rather than, as some admitted, a complete sense of desperation. While not an answer to the many questions raised over issues of authority, direction, accountability and departmental relations, it would help to illuminate the way forward based on the lessons of past practice and afford ministerial staff some body of reference upon which to both model their conduct and avoid the mistakes of their predecessors. It would separate the "urban myths" that circulate on the Hill from the more valuable truisms, and at the very least ensure that every new Chief of Staff knows from Day 1 why it is essential to clear their in-box each day before leaving the office.

Would a Canadian Parliamentary Interview Project answer all the issues related to ministerial staff raised by the Sponsorship Inquiry? The answer, regrettably, is no. At best it would serve as a comprehensive and useful first step in describing the social history of political staff as a parliamentary construct. It would capture and consolidate the institutional memory of those who have served in these roles and filter that experience through a non-partisan prism. It would further identify gaps, inconsistencies, legislative loopholes and systemic fault lines that encourage ministerial staff misconduct and, more importantly, capture the wisdom and hindsight of those who have succeeded best in the role. The project would serve to mentor, to mold, to instruct and to warn ministerial staff in the practice of their political craft.

An evaluation of 50:50 or even 60:40 "good to bad" is not an acceptable standard of performance for a role as important to the affairs of state as that of ministerial aide. But it is also not surprising given the high degree of youth and amateurism typical of the role, the variability in the personalities and capacities of the ministers who hire them, the long-standing debate over their rightful role in the policy process, the tensions that arise due to disparities in age, expertise and experience between them and their departmental counterparts and the tremendous pressures, both political and personal, that come to bear upon them in this role. It is an experience like no other, but one that deserves to be scrutinized, professionalized and recorded for the benefit and education of those that follow. Perhaps in the knowing of their history, some ministerial aides will not be condemned, as the well-worn maxim warns, to repeat it.

Endnotes

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[1] For the purpose of this paper, the terms "exempt" staff, political staff and minister's or ministerial staff will be used interchangeably.

[2] J. R. Mallory, "The Minister's Office Staff: An Unreformed Part of the Public Service," *Canadian Public Administration*, 10, No 1 (1967): p. 25.

[3] Peter C. Newman, "We've seen this before," *MacLean's Magazine*, April 27, 2005.

[4] Mallory, "The Minister's Office Staff:" p. 26.

[5] J.E. Hodgetts, "The Civil Service and Policy Formation," cited in Mallory, "The Minister's Office Staff:" p. 25.

[6] Mallory, "The Minister's Office Staff:" p. 25, and in Donald Savoie, "The Minister's staff: The Need for Reform," *Canadian Public Administration*, no.4, (Winter 1983).

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Based on conversation with Sonny Gordon, Thursday June 9, 2005, Montreal, Quebec.

[12] Based on conversation with Jerry Yanover, June 20, 2005, Ottawa.

[13] Minister of Finance 1939 - 1946.

[14] Minister of Finance 1946 - 1948.

[15] Mitchell Sharp, *Which Reminds Me – A Memoir*, (Toronto: The University of Toronto Press), p. 112.

[16] Ibid.

[17] Mallory, "The Minister's Office Staff:" p. 27.

[18] Paul Tellier, "pour une réforme des cabinets de ministres fédéraux," *Canadian Public Administration*, 11, no.4 (Winter, 1968): p. 423.

[19] Ibid., p. 423.

[20] Donald Savoie, *Breaking the Bargain*, (Toronto: The University of Toronto Press, 2003), p. 7.

[21] Ibid., p. 22.

[22] Telephone conversation with Harry Swain, Retired Deputy Minister, June 3, 2005.

[23] Peter Hennessy, *Whitehall*, (London; Fontana Press, 1989), pp.511-2, quoted in C.E.S. Franks, unpublished paper on Minister's Office Staff, April 24, 2005.

[24] Ibid.

[25] Quoted in Thomas A. Hockin, "Government in Canada", 1977 in Donald Savoie, "The Minister's Staff: The Need for Reform," *Canadian Public Administration* 26, no.4, (1983), p. 519.

[26] Savoie, "The Minister's Office: The Need for Reform," p. 514.

[27] For a more detailed discussion see Donald Savoie, *Breaking the Bargain* p. 44.

[28] Quoted in Savoie, p. 44.

[29] Conversation with Jerry Yanover, June 20, 2005, Ottawa.

[30] Blair Williams, "The Para-political Bureaucracy," *in Parliament, Policy and Representation*, Kenneth Kernaghan et al, (Methuen, 1980), p. 219.

[31] Ibid., p. 220.

[32] Based on the author's personal recollections.

[33] Quote from Jean Luc Pepin during Question Period, 1993.

[34] Conversation with Hugh Segal, Kingston, May 23, 2005.

[35] PMO press release quoted in Savoie, *Breaking the Bargain*, p. 124.

[36] Loretta J. O'Connor, "Chief of Staff," *Policy Options*, 12, 3, (April, 1991), p. 24.

[37] Conversation with former Deputy Minister Arthur Kroeger, May 2, 2005, Ottawa.

[38] Savoie, *Breaking the Bargain*, p. 124.

[39] Ibid., p. 124.

[40] Conversation with former senior member of the Privy Council Office, June 13, 2005, Ottawa.

[41] Telephone conversation with a former Deputy Minister, June 3, 2005.

[42] Conversation with Tony Macerollo, Ottawa, June 13, 2005.

[43] Savoie, Breaking the Bargain, p. 127.

[44] Amy Smith, "Nova Scotia MPs Slam Aides Pay Hikes", *Halifax Chronicle Herald*, January 2004.

[45] Ibid.

[46] Mallory, "The Minister's Office Staff," p. 25.

[47] Ibid., p. 25.

[48] Ibid., p. 25.

[49] Arthur Kroeger recalls one new minister that was completely incapacitated for a period of ten days following his appointment to Cabinet.

[50] Public Service Employment Act, Section 39 (1) (R.S.C., 1985).

[51] Treasury Board of Canada, *Guidelines for Minister's Offices*, Appendix C (2003). By comparison, Minister's staff budgets in 1968 were $78,000, in 1975, $130,000, in 1981, $230,000, and in 1991, after budget cuts, approximately $400,000. See Loretta J. O'Connor, "Chief of Staff", p. 23. This budgetary expansion reflects increases in both the size of ministerial staff (from one Executive Assistant plus clerical support to anywhere from 8 to 15 or more executive level staff and far less clerical support) as well as significant increases in salary range.

[52] bid., Appendix B (2003).

[53] Conversation with former Executive Assistant Ron Hallman, Ottawa, June 15, 2005.

[54] Martha Joynt Kumar, "The White House World," The White House 2001 Project, December 12, 2000, at http://whitehouse 2001.org.

[55] Conversation with an Ottawa-based media consultant, June 1, 2005.

[56] Micheline Plasse, "Ministerial Chiefs of Staff in the Federal Government in 1990," Canadian Centre for Management Development, April 1994.

[57] Telephone conversation with former senior bureaucrat and former Executive Assistant to Transport Minister Doug Young, Fred Drummie, St. Stephen, New Brunswick, August 2005.

[58] Conversation with Jerry Yanover.

[59] Conversation with former senior PCO official, June 13, 2005, Ottawa.

[60] Quoted in Plasse, "Ministerial Chiefs of Staff," p. 34.

[61] Conversation with Jerry Yanover.

[62] Plasse, "Ministerial Chiefs of Staff in the Federal Government in 1990," p. 25.

[63] Blair Williams, "The Para-political Bureaucracy," p. 221

[64] Plasse, "Ministerial Chiefs of Staff in the Federal Government in 1990," p. 25.

[65] Ibid., p. 26.

[66] Conversation with Tony Macerollo, June 13, 2005, Ottawa.

[67] *Public Service Employment Act*, 1985, Section 39.

[68] Privy Council Office,, *Governing Responsibly: A Guide for Ministers and Ministers of State*, (2004), p. 33.

[69] Treasury Board Secretariat, *Guidelines for Ministers' Offices*, (2003), Appendix A, "Exempt Staff Position Structure."

[70] Conversation with the Hon. John Crosbie, St. John's, July 15, 2005.

[71] "Fifth Annual Terrific Twenty-five Staffer Survey," *The Hill Times*, April 25, 2005, p. 25.

[72] Quoted in Plasse, "Ministerial Chiefs of Staff," p. 46.

[73] Plasse, "Ministerial Chiefs of Staff," p. 27.

[74] Conversation with Arthur Kroeger.

[75] Professor C.E.S. Franks, "Minister's Office Staff," unpublished paper, April 24, 2005, p. 2.

[76] Plasse, "Ministerial Chiefs of Staff," p. 34.

[77] Conversation with Hugh Segal.

[78] Treasury Board of Canada, *Guidelines for Minister's Offices*, Appendix A.

[79] Donald Savoie, *Breaking the Bargain*, p. 129.

[80] Savoie, *Breaking the Bargain*, p. 198.

[81] Conversation with former PCO official.

[82] Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, (2004), p. 33.

[83] Telephone conversation with former Special Assistant, Mulroney Government, September 6, 2005.

[84] Plasse, "Ministerial Chiefs of Staff," p. 37.

[85] Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, (2004), p. 33.

[86] Testimony of Alex Himmelfarb to the Inquiry into the Sponsorship Program and Advertising and activites, p. 1843.

[87] Privy Council Office, *Guidance for Deputy Ministers* (2003), p. 17.

[88] Neco Cockburn, "Judge rejects Mounties' plea to tell the whole story on Arar," *Ottawa Citizen*, June 2005, p. 3.

[89] Details based on S.L. Sutherland, "The Al-Mashat Affair: Administrative Accountability in Parliamentary Institutions, *Canadian Public Administration*, 34, no. 4, pp. 573-603.

[90] Ibid., p. 592.

[91] Based on conversations with former Deputy Ministers and exempt staff.

[92] *Parliament of Canada Act*, sub-section 72.07(a) May 2004.

[93] Telephone conversation with Duff Conacher, Democracy Watch, September 29, 2005.

[94] *Conflict of Interest and Post-Employment Code for Public Office Holders*, (2004), sub-section 4(1).

[95] Privy Council Office, "Backgounder – Conflict of Interest and Post-employment Code for Public Office Holders," at www.pco-bcp.gc.ca. Undated document.

[96] Standing Committee on Access to Information, "Privacy and Ethics – Evidence", 28 June, 2005.

[97] F. Abbas Rana, "P.M.'s chief of staff should answer questions about tapes: Proctor," *The Hill Times*, June 20, 2005, p. 15.

[98] Democracy Watch News Release, "Ethics Commissioner Must Rule on PMO Staffer, Fails to Fulfill Legal Duties by Refusing To Do So," June 7, 2005.

[99] Telephone conversation with Scott Rothwell, Office of the Ethics Commissioner, September 28, 2005.

[100] Comments made by Edward Ratushny, Law Professor, University of Ottawa on "The National," June 2, 2005.

[101] Comments made by University of Ottawa law professor David Mitchell on "The National". June 2, 2005.

[102] *Conflict of Interest and Post-employment Code for Public Office Holders*, (2004), Section I, 3(b) p. 10.

[103] Anne Dawson, "Top Martin advisors likely to wield power from the outside," *Ottawa Citizen*, November 12, 2003, at www.canada,com News.

[104] Telephone conversation with Duff Conacher, September 29, 2005.

[105] F. Abbas Rana, "Stronach moves to Libs, loses at least two top political aides, *The Hill Times*, May 23, 2005, www.the hill times.ca.

[106] Although correspondence between minister and staff are exempt from the *Access to Information Act*, most other Documentation related to policy development within department would be available.

[107] *Conflict of Interest and Post-employment Code for Public Office Holders*, (2004), Section 23, p. 20.

[108] Treasury Board of Canada Secretariat, *Guidelines for Ministers' Offices*, (2003), Appendix F – Information on the Minister's Staff Priority – The Public Service Commission of Canada.

[109] Ibid., p. 7.

[110] Ibid., p. 6.

[111] Ibid.

[112] Ibid.

[113] *Public Service Modernization Act*, (2003).

[114] Mallory, "The Minister's Office Staff," p. 27.

[115] Ibid.

[116] O'Connor, "Chief of Staff," p. 23.

[117] Statement of Evidence, Commission of the Inquiry into the Sponsorship Program and Advertising Activities, "Priority for Minister's Staff under the *Public Service Employment Act*," (R.S.C. 1985 c.p.33) p. 1.

[118] F. Abbas Rana, "Ministerial political staffers 'worry about their future'," *The Hill Times*, April 25, 2005, p. 30.

[119] Conversation with senior Ottawa lobbyist, Ottawa.

[120] Ibid.

[121] Kady O'Grady, "Lobbyists buzzing about spring election", *The Hill Times*, Monday, April 25, 2005, p. 21.

[122] See Part III, "Post-employment Compliance," *Conflict of Interest and Post-employment Code for Public Office Holders*, (2004), for a full discussion of these provisions.

[123] The reason why the Ethics Commissioner does not police exempt staff infractions of the Code is examined at greater length further in the study.

[134] Conversation with a senior lobbyist.

[135] Conversation with Jean Claude Demers, Aylmer, June 16, 2005.

[136] Paco Francoli, "Tremblay dies weeks before being called to Gomery Inquiry" *The Hill Times*, August 29, 2005, p. 1.

[137] Ibid.

[138] Testimony of Isabelle Roy, Commission of Inquiry into the Sponsorship Program and Advertising Activities, Tuesday October 19, 2004.

[139] Op cit.

[140] Based on Public Service Commission, Statement of Evidence, "Appointment of Mr. Pierre Tremblay under Subsection 39(4) of the *Public Service Employment Act*" (R.S.C., 1985, c.P-33).

[141] Based on conversations with former associates and colleagues of Mr. Tremblay, Ottawa, June, 2005.

[142] Testimony of Isabelle Roy to the Commission of Inquiry into the Sponsorship Program and Advertising Activities, Tuesday, October 19, 2004, Volume 24 (OE), pp. 41-42.

[143] Public Service Commission, Statement of Evidence – Procedures for the Apointment of Ministerial Priorty to an Executive Level Position under the Public Service Employment Act (R.S.C. 1985,c.P-33). May, 2005, p. 2.

[144] Privy Council Office, *Guidance for Deputy Ministers*, (2003), p. 10.

[145] Denis Saint-Martin, "L'affaire Groupaction : un cas de politisation de la Fonction publique federale?", *Canadian Public Administration*, 46, 4 (Winter/2003) p. 450-470.

[146] Ibid., p. 461.

[147] White House Interview Program, "Who We Are" at http//whitehouse2001.org.

THE DEPUTY MINISTER'S ROLE IN THE GOVERNMENT OF CANADA: HIS RESPONSIBILITY AND HIS ACCOUNTABILITY

Jacques Bourgault[1]

This report deals with the evolution of the deputy minister's role, particularly over the past 40 years, a period marked by growth and modernization in the Canadian government and public service.

It will address four subjects: the evolution of the status of the deputy minister, the career leading up to the position and entry into the deputy minister group, horizontal management and development of the deputy minister community, and finally the responsibility and accountability of deputy ministers to the Prime Minister, the Minister, the Clerk and the central agencies.

The first part will explain where the deputy minister is situated in the ministerial hierarchy, and what his responsibilities, functions, powers and obligations are. It will then describe the appointment process, tenure and the implications of this status in the so-called Whitehall model (application to the executive of the so-called Westminster model). This particular model of relations with political personnel will be placed in perspective alongside several models from other countries.

The second part of the study will deal with the career development of deputy ministers leading up to this level of duties and entry into the deputy minister group. Notably, it will be seen how this career involves a shorter tenure, more interdepartmental mobility, more corporate than departmental identification, and familiarity with the operation of the central agencies and their culture. This last element implies an early assessment of potential by major senior public service actors.

The third part of the research is concerned with the operation of the deputy minister group as a community, and also the rise of horizontal management. Nowadays, Canadian deputy ministers work not only within a more interdepartmental framework, but more so within a corporate framework where overall government management affects the individual management plan of every department. We will identify the types of corporate implications, common information tools and processes, coordination of initiatives and integration of departmental programming. Finally, we will examine the impacts of these trends on relationships with ministers and departments.

The final part of the study deals with the responsibility and accountability of deputy ministers in the light of the powers given to them under the law or by the delegation of responsibilities, as well as the directives they receive from the Prime Minister, the Minister, the Clerk and even other central agencies of the government.

This research is based on official documentation (Statutes, Orders in Council, Guidelines and publications by the Privy Council Office), a brief review of the relevant literature, empirical studies already carried out on certain aspects of the subject and, finally, to complement this information, a number of interviews with senior public servants and former federal deputy ministers. These interviews are in addition to some 200 interviews conducted over the past 30 years.[1]

The entire report highlights, on one hand, how the deputy minister's role, responsibilities and career have evolved and, on the other, how the performance of his functions has developed, in order to show how his obligations as an agent have evolved in terms of the discharge and accountability for his responsibilities.

1 Status: Deputy Minister's Position and Functions

1.1

The Deputy Minister: Selection, Recommendation and Appointment

The appointment of deputy ministers, the most senior officials in departments and those closest to ministers, has a discretionary basis that differs from the strict verification of merit that governs the appointment of other public servants in Canada. The departmental statutes provide that the Governor in Council should make such appointments. Under a constitutional convention, the Prime Minister has the exclusive prerogative of recommendation, and the Order in Council passed by Laurier in 1896 formalizing this power has always been renewed (the last time in 1935). The Prime Minister's recommendation nearly always follows the custom of prior consultation involving the Clerk and Secretary to the Cabinet. The Prime Minister sometimes consults his political advisers for an opinion on the Clerk's suggestion. The appointment occurs through the approval of a legal instrument of appointment, the Order in Council, passed at a meeting of the Privy Council, where the Governor General is deemed to be present by the fact of her signature *(Davis, 1968, pp. 304-6)*.[2]

The deputy minister is mandated, therefore, as an agent serving the government, in its collective responsibility to Parliament, by being assigned to a department to serve the minister of the department. Several factors are considered in determining the choice of incumbents, such as: the candidate's experience, his strengths (policy development, leadership or management), the department's particular needs and the minister's experience in the department concerned in order to create complementary tandems, etc. *(Bourgault, 2005c, pp. 19-29)*. A deputy minister recalls: "[Translation] One day the Clerk said to me: Keep an eye on this minister because he tends to be a little lazy!" This process makes the deputy minister an agent who serves the government by being assigned to a department so as to serve the minister. A former Clerk confirmed this as early as 1972: "[Translation] It must be recalled that in our system of government, the appointment of deputy ministers is the Prime Minister's prerogative. It is therefore logical to say that they are in the service of the government." *(Tellier, 1972, p. 378)*.

Since the late 1970s, the Privy Council Office (PCO) has relied on a secretariat of senior staff to lay the groundwork prior to an appointment and to manage the deputy ministers' files. Several deputy ministers from the early 1970s have told us they did not find out about their appointment until after the Order in Council was passed! Others read about it in the newspaper. In spite of the discretionary and political nature of the appointment, the Public Service of Canada remains eminently apolitical and professional. Since the 1960s, over 95 percent of deputy ministers have come from the ranks of associate and assistant deputy ministers, and the very vast majority of these have made their careers in the federal public service *(Bourgault, 2005c, pp. 31-38)*.

The appointment of the deputy minister is for an indefinite period during pleasure. The *Interpretation Act* (section 24.1) provides that the power to appoint includes the power to dismiss. A simple, unexplained decision by the Prime Minister is enough to relieve a deputy minister of his duties.

The Prime Minister may attach to the revocation of an appointment another discretionary recommendation to appoint a deputy minister to another deputy minister's mandate, another discretionary designation (e.g., as an ambassador) or a special assignment (e.g., head of a study or a reform).

1.2

Responsibilities of the Deputy Minister

The deputy minister is responsible to the minister, the government, the central management agencies and Parliament.

1.2.1 The Minister

In a parliamentary democracy system, the departmental statutes and most of the functional statutes assign the powers to make decisions and act exclusively to Ministers. They are responsible both individually and collectively to Parliament, particularly the House of Commons. The collective responsibility of the ministers of government to Parliament stems from the existence of the ministerial solidarity of Cabinet. Deputy ministers only rarely have autonomous decision-making powers and, therefore, support and serve ministers in their responsibilities, notably by providing advice and carrying out any delegations of authority from the minister. The ministers have powers from various sources: statutes respecting the department and any agencies in the portfolio (management and direction of the department, parliamentary responsibility of the agency), functional statutes (which codify sectoral policies), central agency legislation, legislation respecting various specialized agencies, regulations made further to the above-mentioned legislation, conventions, precedents and customs, a broad range of responsibilities, missions or special roles *(PCO, 2002, p. 10)*. It is the role of deputy ministers to support their ministers in the exercise of these powers. The delegation of these powers has two effects: creation of accountability to the minister and establishment of an area of administrative autonomy for the deputy minister. As one deputy minister said: "[Translation] As soon as he assumes his duties, the minister signs a delegation of authority for me, and then I become *the* person responsible to him...and *the* person in command!"

A minister bears responsibility for his own actions and those performed on his behalf by his officials, with or without his prior knowledge. Deputy ministers have the essential responsibilities of providing the minister with sound advice and ensuring that officials' actions comply with the law as well as with the wishes of the minister and the government. "The accountability of departmental officials is to the minister through the deputy minister, but it is the minister who is accountable to Parliament." *(PCO, 2002, p. 7)*[4]

The government is active in huge areas and manages hundreds of billions of dollars and hundreds of thousands of employees, across an entire continent, in complex areas of ever-evolving knowledge, social challenges and public policies. The minister, generally an MP, who represents a riding, sits in the House and is active within his party, does not have the time, availability, training, information or experience to study all the files requiring his approval. Furthermore, the majority of ministers are given new departmental assignments, on average every two years, and this requires them to become acquainted with new files and a new network of civil service stakeholders.

The deputy minister's mission is to serve the minister in non-partisan fashion, competently, impartially, diligently and loyally. So as to optimize the management of the minister's time and to inform him in his decisions and projects, the deputy minister provides professional, non-partisan advice concerning the development and implementation of policies, prepares the tools that will enable the minister to take a discerning stand in public, and manages the compliance of the decisions he makes. On a daily basis, he ensures the sound operational management of the department.

The deputy minister also acts as the senior adviser to the minister concerning all the responsibilities exercised by him. In addition to having responsibility to Parliament for the agencies in his portfolio, the minister receives special mandates from the Prime Minister and Cabinet. The deputy minister acts as his chief adviser in all such matters. "Their role is to provide their minister with the broadest possible expert advice and support needed for the minister's portfolio responsibilities and to undertake the day-to-day management of the department on behalf of their minister. However, deputy ministers do not exercise direct authority over non-departmental bodies within the portfolio." *(PCO, 2002, p. 7).*

1.2.2 The Government

The deputy minister also serves the government of the day as the institution responsible to the House of Commons. More particularly, he serves the Prime Minister, who heads the Cabinet as a Committee of the Privy Council, the body that appointed the deputy minister. To do so, he provides the Prime Minister, the Clerk, Cabinet and its committees, with information, studies and opinions; he takes part in discussions among senior officials and carries out specific mandates assigned to him. Generally speaking, he comments on draft policies of the Council of Ministers and ensures that the agenda and priorities of the government are properly reflected in his department's action plan. He also ensures that all of his department's employees act to fulfill the objectives of the government of the day. In addition, he organizes interministerial consultations on any issue liable to affect the general responsibilities of the other ministers. The manner in which the deputy minister supports his minister is another way of serving the government, overall; sound projects make the government look good, and timely cautions keep it from getting into trouble.

Some have noted the excessive influence of senior public servants on Ministers and the government. The decision-making provisions introduced during the past 40 years seem to have increased the professional autonomy of Ministers and Cabinet:

> The Trudeau approach to decision-making in the Cabinet [to multiply ministerial committees and prepare abundant documentation for decisions] has had many consequences… For these reasons ministers are not as dependent upon their principal civil servant advisers as they were in earlier administrations…[but] while ministers have become more expert, the problems have become more complex, and there remains plenty of scope for the exercise of the analytic powers and judgement of senior permanent advisers. *(Sharp, 1976, p. 6).*

1.2.3 The Central Management Agencies

Deputy ministers receive delegated responsibilities from the heads of central agencies, such as the Minister of Finance, the President of the Treasury Board, the President of the Human Resources Management Agency, the Minister of Public Works and Government Services, etc. Legislative provisions, regulations and decisions set the delegation frameworks.

Deputy ministers must carry out these delegated authorities competently and diligently, ensure that appropriate management and control systems are in place, and periodically report to their principals:

> their responsibility to ensure that government-wide management practices are observed in their departments in order to support the Ministry's ability to approach Parliament as a collectivity for supply, and to maintain the confidence of the House of Commons in the Ministry. *(PCO, 2003, p. 17).*

1.2.4 Parliament

Since 1987, a parliamentary committee has been able to summon a deputy minister to communicate information about the management of a department and any public information that the minister cannot provide himself. Parliamentary agents conduct examinations of departmental operations and report to Parliament, which assigns its committees to study the findings. Deputy Ministers may thus be summoned to appear.

1.3

Powers and Obligations

Departmental statutes do not generally provide for any particular power for the deputy minister; they contain rather a standard section whereby he assumes the role of deputy head responsible for the financial and human resources of the department. Legally, the deputy minister acts under the direction and management of his minister. Most of the powers of the deputy minister are delegated by the minister in accordance with the provisions of the *Interpretation Act*. Under section 24(2) of this Act, the minister authorizes the deputy minister to fulfill certain administrative, legislative and judicial functions assigned to the minister. Not all ministerial prerogatives can be delegated to the deputy minister.

Moreover, certain provisions of the *Financial Administration Act* (e.g., sections 31.1, 31.3, 32.2 and 62 give specific powers to the deputy head to allocate the budget and submit it to the Treasury Board (TB), to implement controls, internal audits, control of commitments and public property inventory systems), the *Public Service Employment Act* (staffing, promotion, competitions) and the *Official Languages Act* (by delegation) assign certain powers directly to the deputy head. In these areas, the minister can only make sure that the deputy minister fulfills his responsibilities, without giving him specific instructions.

The deputy minister also enjoys some other direct powers, such as those arising from special statutes, conventions, common law or legislation respecting regulatory matters designed to isolate decision-making in political interventions.

The formal obligations of the deputy minister involve accountability to his multiple principals (minister, Cabinet, Prime Minister, central agencies), as well as to any institutions and agencies thus designated by the Act (Parliament and its agents). Less formal, but just as real, obligations are imposed on deputy ministers: in his department he must implement the government priorities and management initiatives of the central agencies, and, as a manager, he also has moral obligations towards his peers, senior executives and employees.

1.4

Classifications of Seven Types of Relationships with Political Personnel from Four International Models

The system of relationships between ministers and senior officials is aimed at guaranteeing the conditions for implementing the agenda arising from the democratic will and ensuring adequate management of the machinery of government. The models vary depending on the emphasis each system puts on either of these two objectives. Presented in a very simplified fashion for the purposes of this paper, the institutional typology presents four families of systems of relationships between political and administrative spheres. The Weberian (or Westminster) model promotes the fundamental distinction between the political and administrative spheres. Senior officials have no legal career guarantee but are professional and non-partisan. This is the model used in the United Kingdom, Canada, Australia, Ireland, etc. In the continental European model, senior officials are career employees but are actively involved in the formulation and promotion of government policies. As observed in France, Germany, Austria, Sweden and Switzerland, they are generally associated by affiliation or sympathy with a trend, party or politician. The American model relies on a senior civil service, which has no career guarantees, and is non-professional, partisan and very involved in the formulation of policies. Finally, in the socialist governments, the senior civil service is highly politicized and enjoys statutory career guarantees *(Bourgault, 2005c, pp. 41-67)*.

In the early 1980s, Aberbach, Putnam and Rockman identified a functional classification of four types of relationship between senior officials and ministers. These types of relationship included the *complete separation of roles* (the minister alone decides on everything and the public servant only implements), *shared expertise* and *political sensitivity* (the public servant provides the expertise and the politician ideology and sensitivity to the pressures of society), *shared responsibilities based on impetus and balance* (the politician represents the general non-organized interests of society and the public servant arbitrates the interests of specialized clients by taking part in policy development) and the *perfect integration of roles* when the politician and the public servant play undifferentiated roles. Campbell (1989) adds three types between categories 3 and 4 of the model: the *reactive career bureaucrat* who pursues his career interests while participating in the development of policies, the *proactive permanent civil servant* who associates himself with the political leaders of the day to facilitate his own political agenda and advancement, and the *politico-administrative amphibian* who is not from the civil service but who enjoys privileged linkages within the highest levels of the party in power.

It is important to look at the diversity of these models inasmuch as each model defines roles to be assumed, flexibility, behavioural expectations from the environment and particular areas of accountability. For example, the complete separation of roles model confines the deputy minister to a purely administrative role and forbids him to advise the minister on any subjects of a political nature. The pure amphibian, however, can intervene in partisan debates and expects his minister to intervene in management of the department.

The Canadian senior public servant of the latter half of the 20th century corresponds to three of these models: *shared expertise and political sensitivity, reactive career bureaucrat and proactive permanent civil servant*. Indeed, they transmit expertise to politicians, make a success of their career through their contribution to policy and promote implementation of the agenda of the government of the day. Nearly every senior bureaucrat has a career path worthy of special classification attention, to the extent that occasionally there are some cases that fall into the other categories. Cooperation on the basis of mutual and convergent interests distinguishes the relationship between Canadian ministers and senior bureaucrats.

2 Deputy Ministers' Career Development

2.1

Career Leading up to this Level of Duties

Most deputy ministers have a graduate studies degree. The proportion of PhDs has decreased since 1977. At this level of responsibility, the senior public service is no longer looking for super-specialists, but rather discriminating managers who know how to efficiently manage the convergence of knowledge provided by his department's specialists. A large majority of deputy ministers come from the social sciences, mostly from political science studies. Deputy ministers come almost exclusively from the federal public service. Three-quarters of them have held assistant or associate deputy minister positions in other departments or federal agencies. Nearly all of them have occupied a senior executive position in the Privy Council Office (PCO) in the ten years preceding their appointment. Since 1967, deputy ministers have had an average of 25 years in the federal public service by the time of their first appointment *(Bourgault, 2005c, pp. 12-13)*.

2.2

Career within the Deputy Ministers' Group

A second career begins with the first appointment to a deputy minister position. It consists of multiple assignments as departmental deputy minister, then in other types of position staff on a discretionary basis. Until 1917, deputy ministers spent more than 13 years at this level, and over 9 years between 1917 and 1947, nearly all (8.7 years) in the same position. From 1947 to 1997, they spent an average of 6.5 years at this level, two-thirds in the same position. Between 1997 and 2003, the average time spent decreased to 3.3 years.

Today, the first appointment is made at an older age: between 1967 and 1987, the first appointment occurred before age 50 in 65 percent of cases but, since 1997, this has been so in only 30 percent of cases *(Bourgault, 2005c, p. 12)*. A study comparing the average ages of assumption of duties in 12 OECD countries shows that Canada is sixth in the group for the period since 1984. It is in the middle of the pack whereas before it appointed some of the youngest deputy ministers *(Bourgault, 2005c, p. 34)*. This phenomenon, coupled with the way the challenges of the job have evolved, requiring a more adaptable personnel, and the availability of a more generous pension plan, considerably shorten the duration of the deputy minister's career. Prior to 1967, more than half left after age 60, but since 1977, the proportion has dropped to 20 percent *(Bourgault, 2005c, pp. 12-16)*.

2.3

Shrinking of Tenure

Tenure represents the continuous time a person spends in one departmental assignment as deputy minister. The deputy ministers assigned as at July 1, 2003, had occupied their position for 1.6 years, a recent wave of appointments having negatively affected this average.[3] Two years later, nine of the 28 incumbents were still in their position.

The members of this group had held the same position for 2.96 years. Thus, tenure in a single assignment has decreased by three-quarters since 1867 when it was 12.2 years. The times when the trend was broken were during the decades from 1947 to 1957 (down to 5.9 years) and from 1977 to 1987 (down to 2.3 years).[illegible] Numerous changes of government and Prime Minister also contribute to this phenomenon *(Bourgault, 2005c, pp. 15-16)*. For example, the Trudeau-Clark-Trudeau-Turner-Mulroney sequence of Prime Ministers from 1978 to 1987 (one per 1.6 years on average for eight years) had repercussions on the deputy ministers—although they are not partisan, the position is "sensitive". Since 1993, tenure in the same position, owing to the political continuity of the government, has gone up slightly. In 2003, five of the deputy ministers had held their positions for over four years, and one person for over seven years. This was quite a contrast with Osbaldeston's observation that less than 10 percent of incumbents in 1987 had been in their positions for three years or more; only two incumbents left their jobs before completing the first year of their mandate. The situation in July 2005 is comparable to that of 2003.

2.4

More Interdepartmental Mobility

Interdepartmental mobility is increasing remarkably, lending credence to the claim that a deputy minister is a corporate employee of the government, assigned to a department by the Prime Minister, to serve the minister. Since the early days of Confederation, but even more since the 1960s, deputy ministers have had several assignments at this level. From 1917 to 1977, the proportion of deputy ministers who had only one assignment fell from 91 percent to 48 percent. Today, nearly 30 percent of incumbents have from two to five assignments, during an average period of 15 years at this level. Actually, multiple assignments rose from five percent before 1967 to 17 percent after 1967 *(Bourgault, 2005c, p. 14)*.

2.5

Learning About the Culture of Central Agencies and How They Operate

The career path of today's deputy ministers leading up to the time they assumed their position shows that they nearly all have experience working with the central agencies. Though less time is being spent working at the Treasury Board Secretariat (TBS), periods spent at the Privy Council Office (PCO) remain the general rule. Such periods at the PCO vary between two and five years, and only outside recruitment or regional career necessities give rise to exceptions to this rule, thus demonstrating the extent of corporate training. Since these agencies form the nerve centre and strategic centre of executive power, deputy ministers must know about and understand their operation so that they can deal with them. Furthermore, they play a key role in implementing the government's agenda and management priorities *(Bourgault, 2005c, pp. 12-13 and 31-38)*. According to one former Clerk, however, a governing principle is that no senior official should spend his whole career with the PCO. This promotes the mobility and multiplication of assignment opportunities in the PCO: "A third principle is that there are virtually no officers making a career within Privy Council Office…the term of appointment is purposely kept short, three to five years…and is part of broader career development."*(Robertson, 1971, p. 505)*. Many others found out about the "centre" of government from other points of view: in central departments, such as Finance, or horizontal departments, such as Foreign Affairs and Justice. Some have served ministers as chiefs of staff—even if those ministers were of a government party different from the one that has appointed them deputy ministers today. In short, what is of chief importance is intimate knowledge of how the machine works.

3 Horizontal Management and Community Development

3.1

Operation of the Deputy Minister Group as a Community

Canadian deputy ministers seem to form a functional community with a strong sense of identity, lots of cohesion and loyalty to one another. Some fear the formation of an opposition force, while others see in it a danger of loss of efficiency. It seems to us rather that the performance conditions of a deputy minister mean that he cannot achieve anything without the support of his department. They know that, if they do not meet with success, they will soon be replaced. Deputy ministers have to unite the department at the "centre" and transmit the "centre's" inflows to the department. Furthermore, the decisions of the "centre" rely on the departments' studies and opinions. Finally, the trend towards more modern corporate management has more advantages than disadvantages. The DM seeks to balance loyalties in "normal" situations, that is, in all but the extremely rare times when the PM intervenes indirectly or insistently.

3.1.1 Evolution of the Centre as a Strategic Reference Point for Deputy Ministers

The evolution of the Privy Council Office and the roles of the Clerk as a centre point in the administrative machinery affects the relationships the deputy ministers have with the centre of government. Former Clerk Paul Tellier notes that the reinforcement of the Prime Minister's Office and the Privy Council Office have increased the power of the PM and the centre *(Tellier, 1972, p. 381)*. Still, in 1959, Halliday wrote:

> The position of the Prime Minister is one of exceptional and peculiar authority. He has been called the keystone of the Cabinet, or the sun around which all the planets revolve…he is naturally master of the Cabinet in all matters of organization and procedure. It has been said the office of Prime Minister is what the holder makes of it. *(Halliday 1959, p. 232)*.

Up to World War II, the Privy Council Office simply played the role of secretariat to the Cabinet and the Prime Minister. Major issues were the subject of discussions among the Prime Minister, a handful of deputy ministers, a few ministers and some outside advisers. *(Sharp, 1976, p. 3)*. At Cabinet meetings, it was not unusual to see the Prime Minister take out a slip from his pocket with the day's agenda on it. The Clerk took very minimal notes *(Robertson, 2000, p. 216)*. The War Cabinet Committee revealed the advantages of the ministerial committees, which steadily developed until they reached their height in numbers and influence under Trudeau and in decision-making authority under Mulroney. So the Clerk, especially in his capacity as Secretary to the Cabinet, had ever greater importance between 1946 and 1964 *(Bourgault, 2005b, p. 16)*. The deputy ministers had to constantly work with the Secretary to the Cabinet in order to prepare their ministers for these meetings, notably by discussions among deputy ministers or by holding preparatory meetings *(Bourgault, 2005b, p. 13)*.

The Clerk gradually became the deputy minister to the Prime Minister, and this affirmed his role in relation to his peers beginning in 1985 with Paul Tellier *(Savoie, 2005, p. 37)*. "The Clerk is your boss," said one deputy minister. He advises the Prime Minister in all the PM's prerogative areas, (e.g., appointments, hirings, classifications, salaries, separations, promotions, appraisals, etc.) and provides support for the ultimate decision-maker of our contemporary executive universe, notably to identify the subjects in respect of which expectations could be expressed and even, to judge from our interviews, to comment on the ministers' selection proposals.

Until 1969, the Clerk was regarded as one of the deputy ministers, who was assigned some specialized duties, was in daily contact with the PM and was potentially influential. He acted as a "senior" within the community *(Hay, 1982, p. 15)*. With the increasing complexity of the committee machinery, the growth of its functions in the late 1960s, and the arrival of Pitfield in 1975, the Clerk was apparently regarded formally for the first time as the most senior official, a *primus inter pares*, indeed even a "boss." He became a reference point for the deputy ministers and an intermediary in difficult situations within the departments. In 1992, further to the recommendations made by the working group on the initiative Public Service 2000, a legislative amendment made the Clerk the Head of the Public Service and the person in charge of its development, and required that the Head provide an Annual Report to the Prime Minister *(Bourgault, 2005b, p. 21)*. Every Clerk has his personality and his style *(Gray, 1985, pp. 15-16)*, but beyond the individualities, we have seen that, in all these capacities, the evolution of the relationships between the deputy ministers and the centre of government has been marked in two ways in the past 40 years: confirmation of the Clerk's supremacy over the deputy ministers and creation of a central apparatus for coordinating the departments' actions.

3.1.2 The Community

The support of the deputy ministers' community plays an essential role in professional life; peers sit on committees, but above all, they generally exhibit support and solidarity for each other, in addition to supplying informed advice for one another.The Five Lakes Country Club no longer plays the social role it once did and the festive annual event is no longer held. In order to strengthen the community of deputy ministers, the Clerk organizes such things as dinners and educational events, while other opportunities for meetings and discussions contribute indirectly. The deputy ministers say they give top priority to returning their peers' calls. Some meet outside office hours to "[Translation] Freely talk about the challenges of the job and vent their feelings"*(Bourgault, 2002, Chap. 3)*. Some management tools, such as performance appraisals, with significant contributions by peers, contribute to the feeling of community belonging.

Some feel that loyalty to the centre and the community is greater than that owed to the minister and departmental employees. Attachment to the centre and to one's peers could be a problem for a minister seen too seldom (Savoie, 2004) and could make the department's executives mistrustful (Jabes and Zussman). They wonder how non-specialists who spend so much time out of the department can understand the department's files and effectively defend its interests among the central authorities. This means, though, that, since ADMs are also generalists who systematically move on after brief assignments, we would have to move down four levels before finding someone who really is familiar with the department and its programs! These arguments are erroneous and exaggerated.

First, deputy ministers serve the government first by serving their minister and they understand that this is their primary task. Serving one's minister today also involves being connected to the "centre." Second, the mistrust of executives observed in the early 80s may be explained as a form of resistance to this new trend of appointing generalists within corporatist empires of specialists (engineers, accountants, physicians), as resistance to the intrusion of the "centre" into professional enclaves, or finally, as a fear that new approaches might disturb comfortable habits acquired over the years. Above all, we must understand that, these days, everything is changing so quickly and science is progressing so quickly that no one can any longer, as in 1960, claim to be *the* specialist in a department's affairs. Even in the civilian world, there are no longer any doctors or lawyers who can claim to know everything in their field! The deputy minister's role is one of integrator, one who can harness the knowledge applied to public policy problems. They are specialists in this type of intellectual business. We no longer hear such criticisms making demands for specialization.

Third, loyalty to the "centre" and to one's peers is limited since deputy ministers have to mobilize the department in order to be successful, and exclusive reliance on the centre would condemn them to rejection as foreign bodies. All deputy ministers know they are judged by the rank and file on the criterion of getting resources and power from the centre. They eagerly find out about their department's life and issues, they are briefed and take people with them to plead their cases. The networks they have built up over the years, in various previous assignments, help them. Deputy ministers can very quickly get a good grasp of a department's work and its issues. They give themselves five to eight months to do so, using strategies of assumption of duties and leadership techniques to rally their employees around a vision *(Bourgault, 2002)*. They are trained for this, and accustomed to doing it; they are just as good at it as the DGs who frequently change departments.

Nowadays, other public servants also have short tenures, and this helps them to accept the rotation of deputy ministers. It is worrisome to see how quickly executives are rotated in Ottawa (that is, below the DM and ADM levels); tenure seems to be so extremely short that it is hard to maintain corporate memory. In these circumstances, an executive can take risks, should they help him get ahead; when the negative consequences emerge three or five years down the road, the executive will be long gone!

Finally, the power of the community is not absolute in Canada. If such were the case, how would the choice of isolationist behaviour by the Public Works DM in the sponsorship affair over reliance on his peers be explained? Or how could the "patience" of the Treasury Board Secretariat be justified? In a strong community model, protection of the group would have quickly imposed swift and complete rectification of individual behaviours prejudicial to the group.

3.2

Rise of Horizontal Management

The concept of horizontal management emerged in the early 1970s. It may be seen at meetings of bi- or multi-ministerial or government-wide ad hoc committees or committees with mandates and formal processes.

Horizontal management involves three areas: files on policy or program development or management of direct concern to the department (tools: thematic focus groups), corporate files where the deputy ministers give collective opinions as senior advisers to the government (tools: Clerk's breakfasts, Friday lunches, etc.) and management of the community of deputy ministers (tools: Committee of Senior Officials (COSO) and deputy ministers' focus dinners). Horizontal management of all types takes close to 40 percent of the working time of deputy ministers, which gives rise to criticisms from those who feel that the fundamental role of deputy ministers should be to serve their minister and manage their department. In response to this, it is argued that, without horizontal management, the time of the deputy minister would be even more taxed by reactive management of crises, conflicts and operational emergencies, and would produce policies of lesser quality *(Bourgault, 2002, Chap. 2)*. Many accounts support this view: Sharp notes the presence of such committees in the post-war years *(1976, p. 3)*. Pitfield wrote in 1976, "We have not viewed government sufficiently as a total system" *(1976, p. 19)*. "There is growing interdependence in reaching decisions in specific policy areas in dealing with the enormous administrative complexities of government" *(Hay, 1982, p. 7)*. Horizontal management is a reality that cannot be avoided, and deputy ministers take part in it with concern for the perception of their ministers.

3.3

Tools and Processes of Mutual Information, Coordination of Initiatives and Integration of Departmental Programs

Coordination tools vary in their specific forms according to the style and preferences of each Clerk, but in the past 15 years, they have complied with a certain standard profile. They begin with a one-hour breakfast every Friday (or the day after Cabinet meets), which includes a summary of the meeting of Cabinet, a presentation of the Clerk's vision and additional information, and a discussion of certain political aims. At the same time, some 15 other deputy minister committees and other, ad hoc committees bring together the deputy ministers; some meet a few times a week and others a few times a year. As well, the community of deputy ministers goes on a few retreats every year for one or two days *(Bourgault, 2005a, p. 10)*.

Types of DM group meetings in 2004

Formal committees (with mandates) within the PCO:

The Coordinating Committee of Deputy Ministers (10 senior members of the group) exists as a committee, and also has a core committee and three subcommittees.

The COSO (12 DMs) now plays a strategic role in the development of the public service; it is used for succession, DMs' working conditions and performance appraisals. Monthly meetings, as a rule.

The DM advisory committee on human resources management (7-8 members); monthly meeting to implement new Act.

DM advisory committee to TBS (weekly meetings).

TBS committee on management of government information (mandate under review).

Interministerial committee on security and information (variable frequency).

DM committee on official languages (monthly meetings).

Committee on justice and legislative affairs (not very active of late).

DM committee on business development (not very active of late).

Committee on pride and recognition (re-assuming a lot of importance).

Committee on the environment and sustainable development (assuming a lot of importance).

Other professional meetings

Without really being a committee, the Canadian School of Public Service (CSPS) Board includes several DMs and plays a strategic role for both DMs and the senior public service.

COSO: thematic meetings every other week for dinner.

CSPS dinner for DMs the first Friday of every month. There are presentations followed by discussions.

3.4

A Corporate Framework in which the Overall Government Management Plan Affects the Particular Management Plan of Each Department

Nowadays, deputy ministers arrive in a department inspired by a corporate vision. Most of them come from the ranks of assistant deputy ministers. Already, at this level, they do not belong to a specific department, but to the Leadership Network, that is, the government corporation. Early in their career, interdepartmental mobility for executives fosters a government perspective over a uni-departmental one. Seven other instruments contribute to a corporate rather than a departmental approach. The Committee of Senior Officials (COSO) identifies potential candidates for the positions of associate deputy minister and deputy minister. An orientation day for new incumbents is held at the Canada School of Public Service. In addition to explaining the framework and challenges of the function, the session provides reference material, opportunities for transmitting organizational culture, and an opportunity to create more informal links among the members of the community. The Clerk agrees on a performance contract with each of the DMs (composed of key and ongoing objectives, horizontal elements, designated objectives and personal learning objectives). The Clerk's list of priorities, along with other tools such as the department's management accountability framework (the Plans and Priorities document transformed into Actions and Results) provide a framework for corporate pressure. At the end of the year, a visiting committee gathers information (self-evaluation, the minister's point of view, and opinions of the heads of central agencies, such as the Commissioner of Official Languages). COSO studies the files and recommends ratings to the Clerk, who transmits his recommendations to the PM. Retreats and the committee system are an opportunity both to get the opinions of members of the community on government projects being developed and to create a feeling of inclusion for everyone in the production of government policies and initiatives. Corporate support activities include offers of mentorship, availability of personal support, coaching by the Clerk, and offers of continuing learning events.

Management thus goes from horizontal to corporate and encourages deputy ministers to regard their contribution as something that goes beyond the boundaries of their department to encompass the performance of the government as a whole. Furthermore, the commitment of deputy ministers to meld the priorities of the department with those of the government of the day and, likewise, the obligation to account to the Prime Minister, via the Clerk, are marks of corporate management.

3.5

The Impacts of These Trends on Relations with Ministers and Departments

The development over time of provenance profiles and the Leadership Network contributes in principle to a more corporate than departmental sense of belonging. This change has been criticized by many departmental employees (see the studies by Zussman), since it reduces the number of late-career internal promotions, protects departmental culture less, reduces the internal solidarity of administrations and promotes the perception that there is no longer the possibility of intervention from the centre of government. Over the years, there has been a strengthening of corporate identification via institutions (increased authority of the PM and the Clerk) and corporate management mechanisms (debriefing breakfasts, coordination committees, performance appraisals, retreats, selection and orientation).

Nevertheless, every deputy minister very clearly understands that what will make him or break him is primarily his performance within his department and his relations with his minister. No one seeks confrontation with his assigned department in order to satisfy the interests of the corporation *(Bourgault, 2002, Chap. 3)*. The deputy minister must discover, rather, how to give shape in his department to the priorities of the Clerk and the government. Corporate trends nevertheless have impacts on the relations deputy ministers have with their ministers and their departments.

These trends have enshrined the multiple nature of the accountability of deputy ministers: to the PM, the Clerk, the corporation and the minister. Ideally, this accountability is not hierarchical, but simultaneous; conflicts remain possible when the demands from various sides do not converge. The chief occupation of the deputy minister is to relieve these tensions: the central agencies reduce resources, while the minister has expensive projects; the centre wants to decrease such and such involvement by the government, while the minister really likes a type of program; the department is considering a program, which the minister is not keen on; Treasury Board slashes some area of expenditure, while the department seeks to increase it; pressure groups demand a particular action, which the government no longer wants, etc. A senior official tells us: "[Translation] A minister is told "no" fairly often. Ninety per cent of the time, it's because the minister doesn't know he can't do what he's thinking of. If the minister insists, the situation has to be explained to him in detail. If he still insists, you can tell him that you'll discuss it with the Prime Minister and usually that's the end of it!"

As a rule, the deputy minister owes his loyalty first to his minister *(PCO, 2003, p. 15)*. Where there are conflicts with government priorities, however, the loyalty of the deputy minister will go to the Prime Minister since he represents the government for the minister. Normally, the deputy minister is loyal to the Clerk over his peers, but recent cases have illustrated exceptions to this rule.

Several items feed frustrations in relations between ministers and deputy ministers: personality conflicts, different ways of working (although theoretically the deputy minister should adapt to the ways of his political master), a minister's criticisms of his deputy head for having badly defended a pet project or his disappointment in his DM's lack of enthusiasm; the minister feels that the DM is not collaborating with him keenly enough; the minister would like more public exposure for his new program; or the minister wants the DM to sell his projects to his DM colleagues. It also works the other way around: deputy ministers would like their ministers not to trip up during Cabinet meetings and want their ministers to know how to convince their colleagues; and they are always worried about "spontaneous" statements made by their ministers.

When the deputy minister believes that the centre is opposed to a project, he will try to dissuade the minister. How does he know? By numerous subtle and more or less formal ways, as a former Clerk explains:

[Translation]

> These interventions by PCO staff will generally take the shape [further to discussion within the specialized ministerial committee or after information from the Prime Minister] of subtly formulated suggestions to the authors of the Cabinet memorandum [minister and deputy minister of the departments concerned] and will have the effect of directly influencing policy formulation. *(Tellier 1972, p. 378).*

The minister can appeal the position of the PCO, committee or deputy minister to the PM, but he must have excellent relations with the PM, as Tellier wrote, or great influence within the party *(Tellier, 1972, pp. 379-80)*: "[Translation] For an intermediary like the PCO acting on behalf of the PM to stand up between the minister and the DM... there must be a prevailing set of circumstances: the competence and credibility of the PCO staff must be acknowledged by the Minister and DM concerned (the PCO has this according to the description given by Robertson in 1971), the minister concerned must occupy a foreground position with the PM, and the DM concerned cannot be one of the privileged advisers to the head of government…" Such a minister nevertheless claimed that, in a final confrontation with his deputy head, he would win *(Savoie, 2005)* and in these matters reality checks often prove to be surprising. The general rule in these matters is that it all depends on the issues and the individuals involved. That is, the PM will appear to be intractable on certain subjects dear to his heart, regardless of who proposes them, and the confidence built up among them (PM, Chief of Staff and the Clerk) plays a fundamental role. So a veteran deputy minister is sure to win over a new, erratic minister with little support, while a pillar of the party may get his deputy head transferred.

4 Accountability

The accountability of deputy ministers is consistent with their legal obligations, and also the powers and mandates they are given. Many agents entrust him with them: the Prime Minister, the minister, the Clerk, the central agencies, Parliament, certain agents of Parliament, public agencies, his peers and his staff. The accountability of deputy ministers is therefore multiple. His difficulty arises from the fact that, a single action, in its various dimensions, can become the subject of several simultaneous accounts, seen from as many different and sometimes divergent angles (for example, expenditures for access to information will require accounts to be rendered to the Clerk, Treasury Board, a peer committee, the Commissioner, the Office of the Auditor General and perhaps a parliamentary committee). The deputy minister's challenge is to get commitment for actions that fulfill *all at once* the objectives and standards of all these agents, and then to account to each of them in the light of their concerns.

In relation to the Prime Minister, who selects and recommends the deputy minister for a departmental assignment and signs his performance appraisal, the deputy minister has the mandate of an agent who serves the government by being assigned to a department in order to serve the minister. He is accountable for the support provided to the minister, for implementation of the government's agenda and for the particular mandates entrusted to him by the Prime Minister or the Cabinet.

To judge from our interviews, in everyday life, it is extremely rare for the Prime Minister to directly telephone a deputy minister to give him a directive. Many retirees who spent over 15 years as deputy minister never experienced such calls. Some particularly intense situations, such as constitutional negotiations, can give rise to calls "for information." The Prime Minister's personality plays a role here; Mulroney was less formal than Trudeau or Chrétien. So no directives are given by the PM in everyday circumstances. Calls for information from him or his office will convey concerns that any senior official with the least bit of experience will know how to interpret. At all times, the Prime Minister has the final say concerning the behaviour of a deputy minister:

> The appointment of Deputy Ministers on the recommendation of the Prime Minister reflects the Prime Minister's responsibility for the government's overall performance. In the end, the Prime Minister, with the advice of the Clerk of the Privy Council, will determine what, if any, action is appropriate, with respect to the deputy minister's accountability *(PCO, 2003, p. 18).*

When they are appointed, the ministers receive a Guide explaining to them the special relationship between the deputy minister and the Prime Minister:

> As a result of their role in the collective management of the government, deputy ministers are also accountable to the Prime Minister for responding to the policies of the Ministry as a whole and to the requirements of the Treasury Board and the Public Service Commission. This includes ensuring that appropriate interdepartmental consultation occurs on any matter that may

> touch upon broader ministerial responsibilities. In this capacity, deputy ministers are required to keep the Clerk of the Privy Council informed of any matter they consider significant enough to affect their responsibilities or those of their Minister. If the issue is of sufficient concern, the Clerk of the Privy Council will inform the Prime Minister *(PCO, 2002, p. 7)*.

This statement may be read as a warning to ministers.

The legislation clearly establishes that the deputy minister works first of all under the authority of the minister: "Thus, while Responsibility in the Constitution notes that a deputy minister's 'supreme loyalty' is to the Minister." *(PCO, 2003, p. 15)*. This authority ends with its exercise and legal compliance. Within legality, there are choices of appropriateness to be made and the minister remains responsible for the choices he makes in this area, with or despite the advice of the deputy minister. The most usual accountability of the deputy minister is to his minister in connection with the support provided in all aspects of the portfolio held by the minister — that is, the department and the agencies, mandates and special files.

> On a day-to-day basis, a Deputy Minister's accountability is to his or her Minister. The deputy's accountability cannot be exercised without reference to the responsibility of Ministers to Parliament. Deputies act on behalf of their Ministers, exercising their Minister's statutory powers on the Minister's behalf, and playing a role in ensuring the control and supervision of the financial, personnel and other resources at the department's disposal. They are, therefore, accountable to their Ministers *(PCO, 2003, p. 16)*.

Within the department, his role in supporting the accountability of the minister consists of preventing mistakes, identifying any made as soon as possible, informing the minister of them, and taking corrective action and any sanctions necessary—so that his minister can fulfill his political responsibility in the House:

> The Minister is accountable, in the sense that the Minister deals with the issue in Parliament and accepts responsibility. The Minister will tell Parliament that an error was made, that he or she has investigated the circumstances and initiated measures to see that it does not recur. The Deputy Minister is responsible for the effective management of his or her department, and must account to the Minister for what went wrong... It is the Deputy Minister's duty to confront problems openly and directly, and to improve the management practices within his or her department...*(PCO, 2003, p 18).*

Accountability to the Clerk involves three main areas. First, the most personal accountability of the deputy minister concerns his performance expectations and appraisal; the Clerk recommends a performance rating and performance award to the Prime Minister. Second, in recent years, there have been the Clerk's priorities, most of which express the government's priorities in administrative terms; these will in large part form the performance agreement of the deputy ministers. Finally, the Clerk may, from time to time, give special instructions or mandates, or even issue reminders to deputy ministers (for instance, issues concerning the three aspects of their horizontal commitment). The *Guidance for Deputy Ministers* document clearly expresses this relationship of responsibility:

> Deputy Ministers in the Government of Canada are also accountable to the Prime Minister, through the Clerk, to support the Minister in a way that is consistent with the agenda and direction of the government as whole. In this way, Deputy Ministers contribute to the unity of the government they serve *(PCO, 2003, pp. 15-16).*

Beyond these formal instruments, the consequences of administrative life may give rise to accountability accompanied by sanctions: according to our interviews, Clerks have already "put under administrative tutelage" departments with too many problems, and deputy ministers have been moved, replaced or retired.

Central agency standards express the guidelines issued or authorized by Cabinet and departmental committees. Deputy ministers are accountable for the powers entrusted to them by the central agencies, notably concerning human and financial resources, and public property. This accountability is formally expressed through periodic and annual reports, as well as answers to questions posed by agency representatives. Conversations with central agency officials and former deputy ministers have provided material to document a few cases in which delegations of decision-making authority to departments and deputy ministers have been recalled temporarily because the central agency was not satisfied with the way in which rules and procedures were being applied in some departments and agencies. Appraisal of everyone's performance by peers, which includes consultation with the central agencies, contributes to this accountability. Conversely, deputy ministers of central agencies are also the subjects of such procedures, and this makes them accountable for their practices to their deputy minister colleagues in departments. To avoid the disapproval and consequences of management mistakes or errors of judgement, some deputy ministers may be satisfied with observing the formal prescriptions of the central agencies, rather than the spirit of accountability. For example, mental evasion and withholding of information might enable deputy ministers to avoid letting a central agency know about any difficulties in the management of a program. It would never be possible to spell out in detailed fashion all accountability provisions, but deputy ministers have always had a duty to interpret their obligations as agents broadly and proactively. For example, they have a moral duty to inform the central agencies of difficulties stemming from the management of public funds within their department.

Deputy ministers also report to Parliament by appearing before parliamentary committees, regarding the "supervision of the financial, personnel and other resources at the department's disposal," implementation of programs, delivery of services and assessment of their progress *(PCO, 2003, pp. 12-16)*. The rules of engagement determined by the PCO are a diluted version of what the McGrath Report proposed in 1986. On behalf of the minister and with his permission, they answer questions explaining the department's policies and actions. They do not in any way take a position on the merits of policies and do not give any information that is not available to the public. The Office of the Auditor General deems that the answerability of deputy ministers to Parliament is not clear enough in that it does not specify whether deputy ministers answer for their management in a personal capacity or on behalf of the minister. It would like the expectations of the deputy minister, which are set by the Clerk, to be communicated to the parliamentary committees and also would like the committees to make better use of the deputy ministers' accountability framework for carrying out their examinations of deputy ministers' management *(OAG, 2002, 2.44-2.46)*.

It remains hard to reconcile two types of accountability that frequently overlap (Minister and DM) and two reports that may prove to be contradictory. Publishing the results of investigations (was something the fault of the minister or the deputy minister?) would be harmful to the principle of anonymity of professional advice and thus to the quality of support for the minister.

5 Conclusion

This report emphasizes, on one hand, the evolution of the deputy minister's role, responsibilities and career and, on the other, the evolution in the practice of his functions, thus showing how, as an agent of the government, his obligations have grown in terms of execution and accountability.

Nevertheless, the deputy minister has mandates from many simultaneous sources and must account to agents whose concerns, and sometimes interests, may occasionally turn out to be concurrent, if not divergent. Furthermore, the stakes are high for a deputy minister; he holds a strategic position and any error or negligence on his part will have very significant consequences. He has a sense of public interest, which means he assigns a lot of importance to his success. He knows that many eyes are on him—from within, from above and from his departmental clients *(Bourgault, 2002, Chap. 4)*. Finally, he banks on a precarious professional status that does not allow for many mistakes.

In this context, we can state that deputy ministers, in their concern to simultaneously satisfy multiple, very different mandates, enjoy a certain margin of appreciation and that they act by *proprioception*. Proprioception is the ability of the human and animal brain to seek out the strong constraints in its environment and then order its organs to adapt to them. Thus, a fundamental quality of a deputy minister consists of decoding the signals in his environment, placing them in hierarchical order and then organizing an appropriate action strategy, with a view to fulfilling the restrictive expectations of this environment. A deputy minister explains: "[Translation] a deputy minister should know what's important to the Prime Minister. He should also keep abreast of any policies and initiatives under development at the centre and adjust accordingly." A former Clerk is described as "[Translation] ...not liking surprises and becoming very irritable when anything went wrong." Finally, a deputy chief concludes: "[Translation] You're always looking over your shoulder to see who's watching you while you manage, especially since the Centre is more organized. You have to anticipate what others want, particularly in the central agencies."

Some of these signals are formal ones, like the expectations of the Clerk, statutes and regulations, and guidelines from the central agencies. Others are not always so clear or permanent, as is the case of directions taken by government and the minister. Politicians' signals and expectations are described by one deputy minister as being "[Translation] oral, informal, indirect, especially when the legal terrain isn't too firm!" Expectations change with increasing speed with the effects of globalization and the progress of scientific and legal knowledge, as was explained by one deputy minister who was interviewed: "[Translation] Often, what you end up with after a long and refined process of policy development is already out of date in some respects. Things change so quickly these days. You have to adjust continually and modify your vision of things and your plan. You do it through maximum perception of your environments and constant study of the organization." In addition, some of the signals on the radar of deputy ministers are more informal, for example, understanding conventions, interpreting traditions and organizational culture, and anticipating the expectations of the minister and the Clerk.

Anticipating the expectations of those around them, some of which are contradictory, and selecting action strategies have an effect on their decisions and therefore on their behaviour. Certainly, the formalization of the central machinery (role of the Prime Minister affirmed by the presence of electronic media, growth of the Office of the Prime Minister, activation of Committees of Ministers, expansion of the organizational capacity of the PCO, development of horizontal and corporate management) can only strengthen "central" concerns, which become the concerns of the deputy minister. This does not mean that "central" expectations did not exist in the time of MacKenzie-King. It is just that they have become more formalized and important in the past 50 years, and this alters the work perspective of deputy ministers.

In this context, is it conceivable that a deputy minister might leave program management to a minister who clearly expresses his intention to do so with strong signals? One deputy minister recalls "[Translation] that there is a well-established tradition in Canada to the effect that politicians stay removed from program management." When asked about this, several deputy ministers commented as follows: "[Translation] When a deputy minister feels or sees that, in the particular conduct of a file, there is agreement among the Prime Minister, the President of Treasury Board, Treasury Board Secretariat and the minister, then there's no point in intervening, even if the initiative doesn't seem right to him! Why should he throw himself on the tracks in front of an oncoming train?" Others, scandalized by this type of cynical statement, retort: "[Translation] He should oppose it just because it's his role to do so and, in this system, if he doesn't do it, no one else can do it for him! As deputy head of the department, you have the responsibility. You have to correct the situation and alert the Clerk." Some others avoid the crux of the matter by commenting: "[Translation] Traditionally, we don't get mixed up in these publicity affairs of politicians. In any case, they remain marginal in the system!" Perhaps this is another example of the phenomenon of proprioception!

Is it acceptable to a deputy minister for his minister to intervene directly and regularly with his subordinates? Some reply: "[Translation] I'm not going to baby-sit while my minister contacts my staff. My employees, however, have been instructed not to agree to do anything illegal. So they have to alert me and I'll talk about it to the Minister, and if that doesn't work, I'll tell him I'll talk about it to the Prime Minister!" Some rules have been issued in this regard:

> It is important to remember, however, that exempt staff of a Minister do not have the authority to give direction to public servants. When they ask for information or convey a Minister's instructions, it is normally done through the Deputy Minister *(PCO, 2003, p. 17)*.

Clear rules and conventions exist to guide these situations and they have been stated to both ministers and deputy ministers. Some of the conventions respecting such relationships are to the effect that the minister does not get involved in the day-to-day management of the department's programs. He may, however, get all the information he wishes through information channels already established between his office and the deputy minister's. In emergencies, any sort of communication is acceptable, but the employee must then notify his deputy minister.

In 2002 and 2003, some formal rules based on conventions deemed to be well established were published in order to confirm the deputy minister's obligation to protect the collective responsibility of the government by ensuring respect for the law; they indicate to both the minister and the deputy minister what procedure to follow in the case of disputes:

> They are accountable on a day-to-day basis to their Minister, and a cooperative relationship between the two is critical. The advice that Deputy Ministers provide should be objective and must respect the law. If conflict occurs between the Minister's instructions and the law, the law prevails *(PCO, 2002, p. 7)*.
>
> Deputy Ministers should also consult the Clerk in cases where problems have occurred in the management of the department or the Minister's portfolio, and which may have an impact on the Ministry's ability as a collectivity to maintain the confidence of the House of Commons and move forward its legislative and policy agenda. In such instances, the Deputy Minister may also want to consult the Secretary of the Treasury Board *(PCO, 2003, p. 16)*.

So there are rules, and deputy ministers must constantly opt for exemplary behaviour or an appropriate course of action in dealing with the daily difficulties that arise. It is to be hoped that proprioception does not deprive deputy ministers of their reflex to respect both the letter and the spirit of the rules insofar as they wish to avoid being seen in a bad light for having put some higher-placed stakeholders in the delicate situation of having to intervene. In such cases, the withholding of information contributes to avoidance of responsibility.

In the context of comments bearing on a matter such as the so-called sponsorship affair, it would be tempting for many to make multiple spontaneous recommendations. For example, we have already heard that some suggest putting an end to discretionary appointments or to recommendations by the Prime Minister, while others hope to refocus the energy of the deputy minister on his department or to make him exclusively responsible for spending. For our part, we feel it is best to follow the logic of cause and effect: What was the problem? What were its causes? How to go back as far as possible in the causal chain?

According to our research and the elements submitted to the Commission of Inquiry that came to our knowledge, some problems occurred in several areas of public action, including that of deputy ministers, to which we will give our exclusive attention. We are confronted by a problem for which we must seek the systemic causes:

- If it were proven that a deputy minister had any knowledge or suspicion of irregularities concerning the process followed or the ways in which basic questions were handled and that he neglected to investigate, or to notify the minister; or that, if the minister was involved, the deputy minister neglected to advise him formally to proceed otherwise; or finally that the deputy minister did not warn the Privy Council authorities;

- If it were proven that a deputy minister with delegation of authority from a central agency failed to warn the agency that an internal audit report drew attention to major difficulties in this regard; and,

- If it were proven that a deputy minister had any knowledge or suspicion of irregular human resources management practices and did not or could not intervene to defend the principles of the rule of law, the security and professionalism of public employees under his orders, and the trust of citizens and the House.

Insofar as the blindness of the actor in question could not be explained by corruption, partisan politicization, blackmail or some personal gain, we have to assume the cause of such action as being the phenomenon of proprioception, whereby an actor chooses a conduct which he thinks is consistent with the wishes of those in command.

In this case, an appointment by competition would not have affected this behaviour as much as better protection of the performance of duties would have done. Moreover, if an incumbent, in such a situation, had warned PCO management, he would have fulfilled his professional responsibilities, if not enjoyed better protection. If a deputy minister, in such a situation, had been *exclusively and personally* responsible for procedural compliance with respect to the spending of funds, he would probably have opted to intervene more vigorously to find out about the situation and, if necessary, curb and correct improper practices.

Some would like to refocus the energy of the deputy minister on his department. This backward-looking prescription does not have much to do with the problem concerned. Horizontal management affects all departments, and the difficulty involved in the inquiry affects only one department. None of the evidence showed that the department's incumbent was too busy to keep an eye on his minister or some senior officials, and even less, that horizontal management was keeping him too busy to prevent the irregularities revealed. On the contrary, if the incumbent had been more "horizontal," he would have alerted the PCO, the Treasury Board and the Public Service Commission about the practices brought to his attention. Horizontal management contributes to the quality of policies and government coordination; without it, deputy ministers would have to spend more time settling problems and crises.

From causal theory, it seems to us that the relevant recommendations pertaining to the intervention of deputy ministers should be concerned with four areas: ministerial intervention in program management, retention of staff, exclusive responsibility for processes, and the promotion and monitoring of adequate leadership values among deputy ministers.

- ***Intervention by the minister in the department*** *is a firmly rooted right, reinforced by the full accountability of the minister to Parliament. Canada's executive power operates largely on conventions. Convention requires him to use it with reserve and according to the agreement concluded with the DM where program management is involved. It might be advisable to adopt a practice that would formalize and systematize this type of agreement so as to ensure concordance on the circumstances and terms.*

- ***Retention of staff*** *is currently decided by the Prime Minister at his discretion. This democratic principle of primary importance should be kept but accompanied by a provision enabling a deputy minister who is dismissed to draw the Commissioner's attention to the ethical aspect if he feels that his dismissal was linked to an intervention aimed at avoiding irregular practices. Such a situation would have comforted the incumbent in his role as protector of public funds and interests.*

- *Decisions respecting budget allocations must remain the minister's privilege. Respect for procedural rules, however, can no longer remain the subject of ambiguous or shared responsibility between the minister and deputy minister. The* ***deputy minister must be ultimately, exclusively and personally responsible*** *to both the mandating central authorities and the parliamentary committees that examine these areas of responsibility. Such a situation would have given the incumbent sufficient legitimacy and interest to better ascertain and perhaps oppose any irregular practices.*

- *Because of the changing challenges and modes of intervention in the public sector,* ***irreproachable leadership is required*** *— one that is exemplary and founded on appropriate, adequately promoted values reinforced by increased vigilance from those responsible for the public management system. Monitoring of leadership should become the focus of constant attention by central agency officials and be reflected both in performance agreements and performance appraisals. Every leadership has a proactive dimension respecting the values sought rather than just the strict and reactive compliance with legal prescriptions stemming from already very numerous, though little exercised, controls inasmuch as the conditions for exercising them are not consolidated.*

During crises, bureaucratic systems react spontaneously by creating additional rules and controls. The current system does not lack rules, or central control features—on the contrary! Adding more would only help suffocate the system and add to the costs of the public service, without having any effect on the root of the problem. What is needed, rather, is the creation of conditions conducive to vigilant and constant enforcement.

Endnotes

The author wishes to thank his anonymous evaluators and Professors James Iain Gow and Donald Savoie for their comments; he remains solely responsible for any opinions or mistakes contained in this text.

As is the custom, we have promised our sources confidentiality, and therefore have not attributed the quotations to anyone or named anyone in the excerpts. I plan of course to fulfill these commitments scrupulously.

The instrument, initiated by the Prime Minister, is then signed by two Ministers before being signed by the Governor General since a quorum of four members of the Privy Council is sufficient for the holding of a meeting. Some sections of the *Public Service Employment Act* provide a framework for the status and appointment of deputy ministers.

See also Privy Council Office, *Guidance for Deputy Ministers*, p. 17.

These data may be misleading for three reasons. The first is that, in a group of about 25 people, two or three numbers have a heavy effect on the average. The second is "musical chair" appointments, that is, five to eight appointments at a time, some years even twice (December and June); if we look at the data just after such switches, the averages drop. For example, as at July 1, 2003, the average was 1.6 years since these major changes had occurred only a few weeks before. The third reason is that the averages take into account time spent up to the present in a position and we can never know how much time some people will stay in the same position.

Osbaldeston observed that deputy ministers in 1987 had been in their positions for less than two years. His study, along with the studies by Bourgault and Dion (1988 and 1990), were an alarm signal within the community.

The tradition is to mention that service to the public and the clientele should be among the criteria of accountability. These are ideal pretexts on which bureaucrats rely to raise themselves above democratically elected politicians. These criteria must apply to elected members rather than bureaucrats of all ranks, since bureaucrats themselves could take this approach in order to promote their own corporate interests. The performance objectives assigned by the Clerk to deputy ministers are informed by the government's agenda and always include a component to address these concerns.

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THE STAFFING AND EVALUATION OF CANADIAN DEPUTY MINISTERS IN COMPARATIVE WESTMINSTER PERSPECTIVE:
A PROPOSAL FOR REFORM

Peter Aucoin

1 Introduction

There is mounting evidence that the existing Canadian model of a professional, non-partisan public service needs to be reformed if the public service is to have sufficient independence from the government of the day in order to secure its neutrality in the administration of public affairs. The existing model is one that has been reformed in many ways since it was established in the early part of the 20th century. The most important missing piece in reforms to the model is the staffing and management of the deputy minister cadre that constitutes the professional leadership of the public service. The conventions respecting the staffing and management of the deputy minister cadre that once served to secure the required neutrality of the public service have diminished in their effectiveness.

In this paper, I first outline the basic elements of the Canadian model and its conventions as they relate to the staffing and management of the deputy minister cadre. I then introduce the political pressures on the public service from what I call the New Public Governance. I seek to distinguish this development from the New Public Management, a more loosely defined and internationally applied potpourri of public management reforms that has introduced another set of pressures on the public service but which has a different kind of impact on the issues of public service independence and neutrality. Third, I analyze the Canadian experience within a comparative Westminster perspective in order to highlight the extent to which the Canadian experience is not unique and to identify possible avenues of reform. Finally, I propose a set of reforms that builds on the traditional Canadian and Westminster conventions while establishing a firmer base of public service independence and thus neutrality in the administration of public affairs.

2 The Canadian Model and Conventions

The most recent reforms to the Canadian public service system have sought to reinforce the professional and non-partisan characteristics of the public service. The authority to staff the public service is vested in the Public Service Commission (PSC), an independent executive agency, headed by a President and two (or more) part-time commissioners. It is independent insofar as the authority to staff the public service is vested with the commission and not with ministers. Ministers, in other words, are deprived of what is usually considered a fundamental executive function, namely, staffing the executive's organization.

However, not all those who are conventionally regarded as public servants are appointed by or under the authority of the PSC. The two highest ranks in the public service—deputy ministers and associate deputy ministers—are appointed instead by the Prime Minister using the authority of the Governor in Council.[1] The most senior deputy minister is the Clerk of the Privy Council, who is also Secretary to Cabinet and Head of the Public Service, and who serves as the deputy minister to the Prime Minister. The Clerk leads the deputy minister community, and chairs the Committee of Senior Officials (COSO) that assists in managing the deputy minister cadre. The Clerk, assisted by this committee, advises the Prime Minister on deputy minister staffing and performance evaluation (Canada, Privy Council Office 2003).

2.1

Strengthening Independent Public Service Staffing

The most recent reforms did not alter this traditional structure of authority. Staffing authority remains with the commission, even though the new regime is designed to have the commission delegate staffing authority to deputy ministers. The commission then holds deputies to account for their use of this authority, with sanctions that the commission can apply if it decides they are necessary. Staffing is to be based on "merit" and merit is defined in ways that are meant to guard against both partisan considerations and bureaucratic favoritism.

At the same time, the neutrality of the public service has been strengthened by the personal decision of the first President following the reform to position the PSC more explicitly at arm's length from the deputy minister community. For many years the President of the commission participated as a member of the deputy minister community in regard to corporate responsibilities for human resources management across the public service, notwithstanding the commission's unique status as an independent executive agency. Some were subsequently appointed to other positions in the public service, including the position of deputy minister. These presidents were treated, in other words, as akin to a deputy minister. At present, the President of the commission no longer participates as a member of the deputy minister team.

The President of the commission is now appointed by the Governor in Council with the approval of Parliament, serves a seven-year term during good behavior, and can be removed only on address to the House of Commons and Senate. These conditions of the position clearly distinguish it from those of deputy ministers who are appointed and serve at the pleasure of the Prime Minister. What is new in these conditions is the requirement that the government's appointee be approved by the two houses of Parliament. More importantly, both the President of the commission and the Clerk have agreed that a new relationship is in order. It was noteworthy that the first president under this new regime was appointed from the Office of the Auditor General, and not from the deputy (or associate deputy) minister cadre or from the public service appointed under the authority of the PSC, and she will have reached retirement age at the conclusion of her term.

The new relationship between the President of the commission and the Clerk and the deputy minister community was needed because the President had increasingly become viewed as a member of the senior public service executive team. This raised concerns about the independence of staffing in the public service insofar as the senior executive of the public service has been seen by some to be too politically responsive to the government of the day. As some observers see it, deputy ministers now function with less independence from ministers than is required for them to ensure the neutrality of the public service. As Donald Savoie puts it, the "bargain" respecting the independence of the public service that once secured the neutrality of the service has been "broken" (Savoie 2003). The Canadian system of staffing and managing the deputy minister cadre is regarded by public service leaders in other Westminster systems as the most politicized, given the powers of the Canadian prime minister relative counterparts in Britain, Australia and New Zealand.

2.2

The Conventions of the Neutral Public Service

The existing regime for the staffing, managing and evaluating deputy ministers, in my opinion, is a fundamental part of the problem. The traditional model is based partly on convention. Formally, as noted above, the Prime Minister, as head of government, appoints, assigns, and removes deputy ministers, using the statutory authority vested in the Governor in Council.[7] Except in the case of the Prime Minister, who appoints his or her own deputy minister, ministers do not appoint their deputy ministers. Although they may be consulted on appointments, the appointment of deputy ministers is deemed a prime minister's prerogative. Ministers have no right to challenge a prime minister's staffing decisions. These powers in respect to the deputy minister cadre complement the Prime Minister's powers in respect to the appointment, assignment, and removal of the ministers themselves. The prime minister, in these respects, is the first minister, the chief executive.

By convention or tradition, however, the Prime Minister decides on appointments, assignments and dismissals on the basis of advice from the Clerk, assisted by COSO. Also by convention, deputy ministers are appointed primarily but not exclusively from among the ranks of the public service that is staffed under the authority of the PSC on the basis of merit, the highest rank being assistant deputy minister, although there is now increased interest in recruiting more deputy ministers from outside the service. An appointment to the deputy minister cadre is thus usually a career promotion based on considerations, by the Clerk and COSO, of ability and past performance of career public servants from the federal public service. The appointment is meant to be based on merit, as is the case with the public service that is staffed by or under the authority of the PSC. Notwithstanding their formal appointment by the Governor in Council and the prerogative powers of the Prime Minister, deputy ministers are thereby deemed to be professional and non-partisan public servants. The prerogative powers of the Prime Minister, in other words, give way to an understanding, or bargain, that allows the public service leadership themselves to staff and manage the deputy minister cadre.

The very few exceptions to this tradition, where the Prime Minister on his or her personal initiative appoints a deputy minister from outside the public service, serve to confirm the acceptance of the convention, especially in those instances where a prime minister is seen to be acting from a partisan perspective. The tradition of the federal public service is also seen to stand in sharp contrast to the more partisan-political traditions or practices in some, if not all, provincial governments (Lindquist 2000). Where such partisan-politicization occurs, deputy ministers are appointed by the premier precisely because they are known to share the partisan persuasions of the government of the day. This usually means that these deputy ministers are recruited and appointed from outside the provincial public service in question, especially following a change in government. In some instances, attention is given to their qualifications as well ("partisan but expert"); in some other instances, partisanship and/or personal connections to the premier are the dominant, even exclusive, considerations. In the latter cases, appointments come close to being patronage appointments for past partisan services rendered and invariably have the not unexpected consequences of introducing incompetence into the public service. In any event, where partisan considerations come into play the deputy ministers in question are merely an extension of the ministry; however otherwise personally qualified, they cannot claim to be members of the professional and non-partisan public service. They are appointed by partisans acting, at least in part, on a partisan basis.

3 The Political Pressures of the New Public Governance

While provincial experiences over the past two or three decades indicate a general movement away from the worst excesses of partisan patronage in the staffing of their deputy minister cadres, both provincial and federal public services have been subject to the pressures of what I call the New Public Governance that has emerged over the past three decades. As discussed below, the New Public Governance is not unique to Canada; it is an international phenomenon. These pressures are political but not primarily partisan in their character. They have a partisan effect, nonetheless, because the government of the day is always a partisan entity—the governing party (or parties, in the case of coalition governments). They are the pressures that prime ministers and their ministers apply to their public services to make them as responsive as possible to their political agendas, including the maintenance or promotion of political support from specific interest group constituencies as well as from the general public as the electorate. As discussed below, the New Public Governance should not be confused with the New Public Management, although most observers do not distinguish between them.

These public governance pressures are "new" in the sense that they emanate from:

- the transparency resulting from the modern communications technology revolution;
- the emergence of greater assertiveness and aggressiveness by mass media;
- the openness that comes with the advent of a public right to access government information;
- the establishment of a host of more intrusive and independent audit and review agencies;

- the public exposure of public servants as witnesses before parliamentary committees as well as in public engagement or consultation exercises, and,
- a less deferential citizenry that demands greater public accountability by both ministers and public servants.

There has always been a political dimension to public administration, of course; politics is an inherent part of public governance. So what is new is only relatively so. At the same time, the New Public Governance has significantly raised the ante for Westminster systems by insisting that the public service not only be loyal to the government of the day but that it also be fully responsive to political direction and be and be seen to be enthusiastic and zealous in its promotion of the policies of the government. In this context, a neutral public service is viewed by some ministers not as a foundation of good public administration but as an obstacle to be overcome by ministers in the pursuit of their agenda.

3.1

Concentration of Power

One consequence of the New Public Governance is an increased concentration of power in the office of the Prime Minister. This phenomenon is well known in Canada. Prime ministers in the Westminster systems have always been more than first among equals in their governments. The pressures of the New Public Governance, however, have everywhere increased their efforts to control power and everywhere they have been more or less successful. Institutional arrangements vary, nonetheless. Canadian prime ministers may be the most powerful, given the absence of effective intra-party checks and balances within the parties that have governed in Canada, namely, the Liberals and the Conservatives. In contrast, for example, over the past two decades, Margaret Thatcher in Britain, Bob Hawke in Australia, and David Lange in New Zealand were each dismissed as party leader by their respective party caucuses while in government, and thus each had to resign as prime minister.

The concentration of power in the office of the Prime Minister has made the prerogative powers of the Prime Minister in respect to deputy ministers even more significant. To the extent that the Prime Minister takes an active interest in the staffing, assigning and evaluating of deputy ministers as instruments to advance her or his government's agenda, the likely result is what Colin Campbell (2001) calls the "personalization" of the deputy staffing process, a form of politicization but not one that entails appointing partisans to public service positions. Deputies, nonetheless, become associated closely with the Prime Minister and her or his agenda under the guise of attending to corporate or whole-of-government responsibilities as they relate to each deputy minister's department. They are, in a sense, the Prime Minister's public service "agents" in the various departments of government. Of all the deputy ministers' accountabilities—to the Prime Minister, the Clerk as the Prime Minister's deputy minister, their ministers, the Treasury Board, and the Public Service Commission—the first is clearly the most critical for their careers, their status in the public service pecking order, and their influence in government. In this context, the scramble of deputies and other senior public servants to gain access to and influence with the Prime Minister, and/or her or his political staff, by being responsive to the Prime Minister's agenda cannot but reinforce the perception that some form of politicization is a factor in the staffing and management of the deputy minister cadre. The "court-like" character of the inner circle around the Prime Minister, as portrayed by Savoie (1999), clearly invites this appearance of politicization.

3.2

Reliance on Political Staff

A second consequence of the New Public Governance has been a significant increase in the number and roles of "political staff" to assist ministers with the partisan-political dimensions of their governmental tasks. These ministerial staff are housed in the Prime Minister's Office and departmental ministers' offices. They are appointed personally by ministers and serve at their pleasure, with no right of tenure. They are referred to as "exempt staff" because they are not appointed according to the staffing requirements of the professional and non-partisan public service. In the Canadian system, however, they have been given the right to be given "priority" status if they apply for a position in the public service for which they are considered qualified. In this circumstance, they may be appointed without competition. In short, they can enter the public service through the proverbial back door. Given that those who serve as political staff invariably gain a measure of knowledge and experience in dealing with general administrative and policy matters, this special provision tends to mean that they have relatively easy access to most general administrative or policy positions, that is, to all but those that also require specialized technical or professional credentials.

Political staff are increasingly problematic for the conduct of good government in the Canadian system. Although they serve merely in a "staff" role to ministers, with no authority whatsoever to direct public servants at any level of the hierarchy, to the extent that their ministers rely on them to get things done to implement their agendas they invariably interact with public servants (and not merely with deputy ministers). In these interactions they will tend to use whatever influence they can to get public servants to respond, including the "spin" that the government or a minister wants to impart in governmental media communications. While so-called "spin doctors" who pressure public service communications officials may be the most visible of the political staff, they are not necessarily the ones who cause the most grief for public servants. Those who cause grief are those who present their views and suggestions in ways that imply that they convey ministerial wishes. Evidence presented to the Public Accounts Committee and the Commission of Inquiry into the Sponsorship Program and Advertising Activities provide ample illustrations on this matter.

3.3

Responsiveness of the Public Service

In 1984, following the election of the Progressive Conservative government, an increased number and enhanced role of political staff was adopted by the new government as an alternative to an explicit adoption of a politicization of the senior ranks of the public service along the lines of the American model. While the career public service may have escaped a major assault on its very foundations, the message to the deputy minister cadre was nonetheless explicit: be loyal to the government and responsive to its agenda or expect to be sidelined in the governance process, or worse.

In fact, the Canadian public service has traditionally given high priority to its loyalty and responsiveness to ministers, even if long periods of Liberal party rule have complicated political and media perceptions of this feature of the federal public service culture. Responsiveness has not been viewed as the result of political pressure; nor has it been seen to undermine the neutrality of the public service. Rather, the public service leadership independently has placed a high priority on responsiveness as a core public service value. And, they did so because they felt that the conventions on the relative independence of deputy ministers from ministers, including the Prime Minister, were sufficiently respected to enable them to balance the values of political responsiveness and public service neutrality. Moreover, they also had confidence in their abilities to articulate to successive prime ministers and ministers the virtues and benefits of this balance — the "bargain", as Savoie (2003) aptly calls it.

The public service may not have welcomed the suspicions of the Conservative government that took office in 1984 but, as it unfolded, its relationship with the Progressive Conservative governments of Brian Mulroney and Kim Campbell from 1984 to 1993 was not radically different from its relationships with the Liberal governments immediately before or after this period of Progressive Conservative rule. Indeed, after an initial period of transition that was rocky for the public service but even more turbulent for the ministry, the public service was paid the ironic compliment by Prime Minister Mulroney when he called on one of its own members, Derek Burney, then with the Department of External Affairs, to take over as chief of staff to the Prime Minister in order to rescue the Prime Minister's Office (PMO) from its obvious disarray.

It is important to stress, however, that the pressures that the Progressive Conservative governments faced were not unique to them simply because they were a party coming to power after what was a considerable period in Opposition (if one discounts their brief period in office under Joe Clark). Not surprisingly, these pressures did not abate with the election of the Liberal government in 1993, even though some public servants (and public service unions),who equated the popularity among many politicians of "bureaucracy-bashing" with so-called neo-conservative governments, especially those of Thatcher, Reagan and Mulroney (Savoie 1994), thought otherwise. As discussed below, these pressures are experienced in all the Anglo-American systems, and extend to governments from across the partisan-political spectrum. These pressures have been especially pronounced in the Westminster systems most comparable to Canada—Australia, Britain and New Zealand—because they all share a common Westminster tradition of ministerial-public service relations that requires a balance of loyalty/responsiveness and independence/neutrality in order to secure both good governance and good public administration.

There has been no explicit partisan-politicization of the Canadian federal public service. (The same cannot be said for all provincial governments and their public services.) At the same time, in response to the pressures of the New Public Governance, prime ministers and ministers have expected their senior public servants, starting with their deputy ministers, to be fully responsive in helping them to cope with the new political dynamics of modern governance. They may not expect their deputies to become partisans to their party. They do expect, however, that they be fully abreast of and helpful in dealing with the political dimensions of their government responsibilities and ambitions in formulating and implementing public policy. In the context of the New Public Governance environment, deputies must be and be seen to be fully on side if they are to be trusted and engaged by ministers, including the Prime Minister.

Although the tradition of the public service supports the value of responsiveness, the traditional culture also requires that it be balanced with neutrality. The pressures of the New Public Governance have tipped this balance too far in the direction of responsiveness. The public service leadership has become either too subservient to the Prime Minister, ministers and their political staff or their conventional independence has been eroded by the breaking of the bargain on the part of prime ministers and ministers. In either case, the independence of deputy ministers needs to be restored to secure the required balance and, thus, strengthen adherence to the value of public service neutrality. The new independence of the PSC is a start. The perceived need to separate the President of the commission from the deputy minister community constituted, at least in part, an admission that the deputy minister community was not a proper environment for an official charged with ensuring non-partisan and merit-based staffing in the public service. But more is required in any event. The deputy minister cadre must be incorporated into the public service by way of a new staffing and management regime that is independent of the Prime Minister. The old bargain cannot be resurrected simply by a renewed effort at acknowledging the legitimacy of the conventions on which it was based. Such an acknowledgement would help, but a firmer foundation in law is now required, given the relentless pressures of the New Public Governance that are not about to diminish or disappear.

4 The New Public Management: Management to the Fore

As noted above, most, if not all, observers make no major distinctions between the pressures on the public service that come from what I have called the New Public Governance and what is widely referred to as the New Public Management. New Public Management is a term that was coined for the major, even radical, public management changes (always labelled as reforms) in the Westminster systems over the past twenty five years, in particular in New Zealand and Britain, and to a lesser extent Australia and Canada, with Canada considered the laggard in most respects (Aucoin 1995). In the American system, the reform movement started slowly put picked up a major head of steam, at least rhetorically, with the "reinventing government" movement that the Clinton Administration adopted as its own. The World Bank, the International Monetary Fund, and the Organization for Economic Co-operation and Development, among others, have helped to spread the NPM doctrine, albeit as a potpourri of methods and techniques, as part of a "global public management revolution" (Kettl 2005).

Although there may not be universal agreement of the defining dimensions or elements of the NPM, the following pressures are among the most significant that brought about the reform movement:

- an insistence on greater economy in the use of public financial resources, especially in light of the deficit/debt situations faced by all governments at the advent of NPM;

- a relentless push for achieving greater efficiency in the management of public resources (financial, human and technological inputs) in the production of public services (outputs);
- a refocusing of service delivery so that the needs, preferences and priorities of citizens (users, consumers, "customers" of public services) take precedence over the convenience and interests of the public servants and public service organizations that provide and deliver public services to citizens (or internally to other government organizations that deal directly with the public);
- an increasingly greater concern that public servants, in designing and delivering public policy and programs, pay close attention to what needs to be done to achieve desired outcomes; and,
- an unrelenting demand by parliamentarians, the media and interested publics that public servants report publicly on the results that they have achieved.

Although public service reform is not new, NPM was seen as a revolution because of the extent to which the perceived need for reform and the general direction of reform were widespread across countries, accepted by political leaders of different partisan stripes, and pushed by reformers from both pragmatic and theoretical perspectives. In some respects, especially with the passage of time, it is clear that the Anglo-American systems were the most affected of the advanced industrial democracies. NPM reforms have been less pronounced in the continental European countries, although other forms of reform have been instituted in many of those systems. In the Canadian context, as noted, there was a more modest adoption of the NPM script, but there have been consequences for the public service.

4.1

Deregulation and Decentralization

The emphasis on management in the NPM necessarily led to reforms that would deregulate the administrative system. In Canada, this meant efforts to streamline the regulatory regimes that governed, in particular, the management of financial and human resources at the departmental and operational levels of the public service. These regulations—the infamous "command and control systems"—stemmed largely from the Treasury Board, the "management board" of the federal government, but also from the Public Service Commission as well as from the central administrative or corporate management units in government departments.

Deregulation was logically accompanied by decentralization insofar as managers, from deputy ministers down the departmental hierarchies, were given greater management authority. They were also expected to assume greater responsibility and accountability as well. The intent was to overcome the impoverished state of management that resulted from excessive regulation and centralization by giving managers down the line, especially those actually administering programs or operations, expanded scope to exercise discretion in ways that would achieve economy, efficiency and effectiveness, especially the first two, in the use of the resources.

In several respects, deregulation and decentralization taken together have been the key components of NPM, for they have given managers greater room to manage. At the same time, this has pressured public service managers, starting with deputy ministers, to pay much more attention to management matters. Indeed, this has required them to manage in ways that previously were not expected of them. Previously, central management authorities in effect dictated how they had to manage and this meant that deputy ministers and their senior operational managers, relied almost exclusively on their administrative specialist managers, in areas such as financial and personnel administration, to handle the "management" side of public administration (Hodgetts 1973). Indeed, senior mangers, including deputy ministers, made no claim to be knowledgeable in these areas of functional administration. NPM was meant to change all this by making the managers, including deputy ministers, manage.

4.2

Decoupling Policy and Operations

A second consequence, although less pronounced in Canada than elsewhere, especially New Zealand and Britain, has been the organizational design that decoupled, or separated, responsibilities for policy formulation and policy-making, on the one hand, and the management of policy implementation or operations, on the other. The Canadian experience here has included a dozen or so "special operating agencies", as well as three "service agencies", including most notably the Canada Revenue Agency. Where the decoupling is used, the intended effect is to have managers responsible for operations focus their attention first and foremost on continuously improving management and achieving economy, efficiency and effectiveness.

For the most part, Canada has maintained the integrated ministerial department with a minister who is responsible for policy and its implementation. This means that the vast majority of deputy ministers head departments that do not separate policy and operations. Given the pressures noted above to make them manage, this also means that these deputies must attend not only to the traditional deputy minister preoccupations with policy, broadly defined, but also with management, that they cannot as easily shuffle off to functional specialists.

4.3

Performance Agreements and Evaluations

If managers are given more authority, flexibility and autonomy, then there must be mechanisms to ensure that they exercise this authority in ways that achieve its intended results. The means that have been used are performance agreements or contracts so that managers are held to account. This requires that superiors be explicit in stating their objectives, priorities and expectations and in setting targets for subordinate managers to meet and achieve. It also means that superiors conduct appraisals or evaluations of the performance of managers using agreed performance measures for individual performance and organizational performance.

NPM has introduced a greater formalization of performance agreements and evaluation, especially at the senior levels of the public service, including the performance management of deputy ministers by the Clerk, with input from COSO, the deputy's minister, and officials in the Privy Council Office and the Treasury Board Secretariat. The evaluation of deputy ministers, among others, is linked to a system of performance-based pay. For deputy ministers, the Clerk is the key superior in setting the expected performance, assessing performance, and determining the consequences, including performance-based pay, although the Prime Minister and cabinet must approve performance awards.

4.4

Marketization, Citizen Choice, and Contracting-Out

In addition to the privatization of public enterprises that has been part of NPM, the agenda has brought about much greater attention to the use of market competition and contracting-out so that the public service is subject to competition from the private sector for the provision of public services, including various internal government operations. In some cases, it is a matter of using competition to promote economy and efficiency; in others, it is to introduce elements of citizen, or consumer, choice of service providers. In either case, it has introduced a measure of uncertainty for many public servants, as contracting-out has consequences for job security, with attendant consequences for managers and the value of a career public service.

Citizen choice and competition have also brought about a reorientation of service delivery so that it is citizen-centred. Major challenges have faced public service managers as they have sought to restructure the ways that services are delivered in line with citizen preferences and priorities, while at the same time maintaining both public services values and attention to affordability. The widespread use of new information and communication technologies has helped immensely here, although citizen-centred service delivery complicates the management of service delivery because of the tensions between the public policy requirements of programs and program delivery and the expectation of citizens, especially those who think of themselves as "customers" of public services.

4.5

Performance Measurement and Results-Based Reporting

Finally, NPM has led to an enormous effort to engage in performance measurement for both results-based management and results-based reporting. The latter, in particular, has been a major development given that it is tied to and required by government commitments to Parliament that departments and agencies will report on results in ways that meet the expectations of parliamentarians. In addition, the government provides Parliament with a whole-of-government report on results of national indicators on several key areas of government policy.

Performance measurement is considered by many reformers to be the critical factor in public management reform: "you can't manage what you can't measure". Many public service managers have much less faith in performance measurement, as evidenced by the extent to which performance measurement is often tangential to managerial decisions and the degree to which the performance measurement systems used for reporting to Parliament are not used for management. Nonetheless, the widespread acceptance of performance measurement as essential to good management, as well as to public accountability, leaves public service managers with little discretion on the matter. For 2005-2006, "management for results" was the first of four "corporate priorities" set by the Clerk for the public service. These are among the expectations of the Clerk for deputy minister performance — the others relating to departmental plans and priorities and personal objectives — that constitute the performance agreement that each deputy minister has with the Clerk, as established on an annual basis.

4.6

The Pressures to Manage

The most important consequences of the New Public Management have been the several pressures to improve public sector management — of financial resources, staff, and services. Although the experience of the Canadian public service has been one of more modest and incremental change or reform than in other Westminster systems, the record of improvement has been significant and on several fronts. In a number of areas, the record puts Canada at the forefront or among the best. Budget deficits have been eliminated and the debt substantially reduced. The quality of service delivery, including electronic service delivery, gets the highest international scores from citizens and independent experts alike. Inefficiencies have been reduced across a wide range of functions and operations as a result of decentralized authority, with considerable cost-savings being the result.

This "good news" receives little media attention. Media attention is focused on the shortcomings in the system, including the various political and administrative debacles. These are matters that need to be addressed. However, there is little reason to think that the traditional system of centralized commands and controls, which severely restricted the capacity of managers to manage, constitutes an appropriate response to these kinds of debacles. On the contrary, these debacles are not "management" problems arising from poor management systems. Rather, they are the result, among other things, of managers being too responsive to political directions. That is the issue that must be addressed. A reassertion of centralized commands and controls would undermine the capacity to maintain the momentum of improvements and it would do so at a high price, financially and in terms of public service morale. Although there are dimensions of the New Public Management, as practiced in the Canadian government, which may well require revision, nothing good would be accomplished by resorting to more rules and regulations as a general reaction to recent debacles. At the same time, improved management, as measured by the standards of economy and efficiency, will not address the shortcomings of maladministration evidenced in several recent debacles. Something else is required.

5 Canada in a Comparative Westminster Perspective

The Canadian experience is by no means unique internationally, and especially not in the Westminster systems of Australia, Britain and New Zealand. The American system is different, of course, but the New Public Governance has exerted similar pressures. The American response has been straightforward and not very helpful to others looking for innovative practices. In a nutshell, the number of public service positions subject to appointment by the President has been subject to a huge increase, on the assumption that political responsiveness on the part of the bureaucracy is the fundamental problem. The increase has been so large that the major problem for successive presidential administrations is finding suitable candidates for all the positions. And, there is no solid evidence that the fundamental problem is the lack of political responsiveness on the part of the public service bureaucracy, at least not in the American government where there has never been the kind of professional and non-partisan public service that developed in the Westminster systems.

5.1

Similarities

The Canadian experience in respect to the staffing and management of the deputy minister cadre shares some common features with the Australian, British and New Zealand systems but also has a number of distinct differences. For the purposes of this paper, the following similarities are significant:

- the senior public servant who heads a government department or ministry under a minister—deputy ministers (Canada), departmental secretaries (Australia), permanent secretaries (Britain), and chief executives (New Zealand)—is the link between the minister/government *and* the professional and non-partisan public service;

- this official has both departmental/ministry *and* corporate/whole-of-government responsibilities;

- these officials are members of the senior public service executive team; and,

- in every case, these officials are considered to be members, and indeed the leadership, of the professional and non-partisan public service, however they are appointed or whatever their employment status/contract.[3]

For these reasons, one can speak of a public service leadership cadre of deputies to ministers in these four Westminster systems.

5.2

Differences

There are differences. In Canada, the senior public service has long been and perceived to be responsive to political direction. The Conservative governments taking office in 1957, 1979 and 1984 were suspicious that long periods of Liberal rule had politicized the upper echelons of the public service, but there were no major battles between these Conservative governments and the public service, at least not following some initial posturing. The fact that the Prime Minister had the power to appoint, assign and dismiss deputy ministers was understood and accepted on both sides of the political-public service divide to be a major instrument of democratic authority.

The same cannot be said for the other three systems, even if the differences are relative. In each case, both between the three systems and Canada and the three other systems themselves, the divide between government and its public service was deeper in terms of both the cultures and structures. The "Yes, Minister" culture, as popularized by the British Broadcasting Corporation comedy of that name which portrayed the minister as the hapless victim of a self-serving, self-regarding and self-governing bureaucracy, was certainly more pronounced in these three other systems, at least in respect to the view that the public service could claim to have a legitimately independent view on what constituted the public interest in matters of public policy and administration. As John Halligan put it in reference to Australia: "The bureaucracy was seen as too elitist, too independent, too unrepresentative and insufficiently responsive" (2004, 83). In Canada, of course, it helped that a number of prominent "career" public servants in the post second world war period jumped ship and ended up as ministers, even as prime minister (in the case of Lester Pearson, a former deputy minister!).

Equally important, each of these three other systems, prior to reforms, had institutional arrangements that made it difficult, almost impossible in some circumstances, for the Prime Minister or ministers to assert their executive authority over their deputy minister cadre. The ideal of a permanent public service extended all the way to the top; hence the British title of "permanent secretary" (or the former Australian and New Zealand title of "permanent head"). In each case, the major reforms included changes to the staffing and management of the deputy minister cadre in these systems in order to overcome what was perceived to be a lack of political responsiveness.

5.3
Australia

In Australia, the process was reformed so that ministers, and in particular the Prime Minister, came to have enhanced and more effective powers over the appointment and management of the departmental secretary cadre (Weller 2001; Weller and Young 2001). The prime minister is now fully in control of departmental secretary staffing; even the formality of a Governor-in-Council appointment has gone by the wayside. The prime minister is advised, on both appointments and evaluations, by the Departmental Secretary to Prime Minister and Cabinet, who is assisted by the Public Service Commissioner in evaluations. (The prime minister is advised on the appointment of the Departmental Secretary to Prime Minister and Cabinet by the Public Service Commissioner.) At the same time, ministers are now much more involved in the appointment process, including interviewing potential appointees. What has emerged is a form of "personalization" of the appointment process that Weller and Young suggest "may be more insidious than politicization because it is far less blatant" (2001, 173).

Departmental secretaries are appointed on contract for fixed terms up to five years. They no longer have tenure, although they can be re-appointed. The actual length of time served by these secretaries has been declining considerably, to less than five years on average in the 1990s (Weller and Young 2001, 160). The prime minister need consult no one on the dismissal of a departmental secretary.

The prime minister assesses the performance of each departmental secretary on the advice of the Secretary to Prime Minister and Cabinet and the Public Service Commissioner who consults with the relevant departmental minister. General guidance, rather than required criteria, is used. Performance awards are based on these assessments by the Prime Minister (Australia, Public Service Commission 2003).

Beginning with Labor governments in the 1980s, and extending to the incumbent Liberal-National coalition government in the 1990s under John Howard, political staff have also assumed a major role in government. Prior to the Labor victory in 1983, the party platform proposed moving to an explicit politicization of the top ranks of the public service, in the American fashion. In office after the 1983 election, the Labor government opted instead to expand the number and roles of political staff (as previously noted, the Mulroney Conservatives in Canada did likewise after coming to office in 1984). According to Campbell, the Australian system has experienced the most pronounced use of political staff in governance of these four Westminster systems, and with mixed consequences for the effective engagement of the professional public service in public governance (Campbell 2001).

Under the two successive Labor governments that preceded the current Howard government, in office since 1996, there was increasing interest on the part of the public service in developing a more collective structure to advise on the staffing and management of the departmental secretary cadre (Weller 2001). In part, this was a response to pressures respecting politicization, and certainly to allegations of politicization (Halligan 2004; Nethercote 2003).

The election of the Howard government put an end to these musings, but not to the concerns. Indeed, six departmental secretaries were sacked without explanation when Howard government came to power, and it appointed its first Departmental Secretary to Prime Minister and Cabinet from outside the public service, a move that was regarded in most public service quarters as a blatant partisan-political appointment (Campbell 2001). Although the official in question had a public service background, he was also a former adviser to two Liberal state premiers and his willingness to express negative views of the career public service could hardly endear him to career public servants. His successor better fits the model of Departmental Secretary to Prime Minister and Cabinet promoted from the ranks of the departmental secretary cadre, illustrating perhaps the common Westminster experience that once a government is in office for some time, it is able to identify for promotion those senior public servants who are sufficiently responsive to their agendas. Nonetheless, the choice is clearly the Prime Minister's to make and there cannot but be some perception that a Departmental Secretary to Prime Minister and Cabinet so chosen owes her or his position to more than merit as defined by her or his peers, even if the Prime Minister must consult the Public Service Commissioner. In this case, the "dual role" of the Departmental Secretary to Prime Minister and Cabinet—deputy to the Prime Minister and head of the public service—can be problematic, notes Nethercote (2003), if the occupant is not accepted by other departmental secretaries as one of them.

5.4

Britain

In Britain, Thatcher was known to become actively engaged in the appointment of permanent secretaries. Famously, she was wont to ask: "Is he one of us?" Her question was designed to ascertain whether the recommended candidate for appointment was inclined to her personal style of public management rather than what she took to be the excessively bureaucratic approach of the career public service. She shocked many career public servants when she went outside the career bureaucracy for a senior Treasury appointment (Campbell and Wilson 1995). By the time she left office, she had established the expectation that the Prime Minister's approval of recommendations was not merely pro-forma (Barberis 1996).

The formal process is that the Prime Minister is advised by the Cabinet Secretary, as Head of the Home Civil Service, assisted by a Senior Appointments Selection Committee, consisting of senior permanent secretaries along with two external members. When an open competition is used, the First Civil Service Commissioner will supervise the process. Under Blair there have been an increased number of open competitions and outside appointments, especially from the private sector (as opposed to the broader public sector). This is a strategy that the Prime Minister considers fundamental to his reform program to build an open public service with no tenure for the senior ranks, including those below the ranks of the permanent secretaries (United Kingdom 2004). Performance evaluation in this context is thus carried out in the consideration of performance awards.

The process is now seen as more open than it once was and thus less of an "old boy network", although personalization on the part of prime ministers and ministers has become more pronounced in response to the "search for greater political control" (Rhodes 2001, 118).

As elsewhere, the number and influence of political staff has been increased and enhanced. This has been especially the case under the Labour Government of Prime Minister Tony Blair. Indeed, under Blair there has been some significant blurring of the boundaries and roles between the partisan-political and public service staff at the very centre of government. Indeed, Blair took the unprecedented step of giving his chief of staff and his press secretary power to issue orders to public servants (Wilson and Barker 2003, 352 and 367).

5.5

New Zealand

In New Zealand, reforms to the process of appointment and management of what had been the cadre of permanent heads sought to give ministers individually and collectively a greater role in the appointment of chief executives (as they were designated by the reforms in question). Under the new model, based on reforms inspired by so-called "agency theory", the relationships between ministers and chief executives were to be structured as relationships between "principals" and "agents"; the relationships were to be contractual in character. Ministers were to decide what should be produced in terms of public services (outputs) and what would be provided as budgetary resources (inputs) for the production of the required outputs. Ministers would then contract with chief executives for the production of these outputs at the agreed budgetary "price". The second part of the model had management authority almost completely devolved to the chief executives so that they could decide on their own how to produce these outputs most economically and efficiently, according to the targets set by ministers. Under this scheme, in theory, ministers could contract with any department with the capacity to provide the desired outputs.

Without getting into the details of the theoretical model upon which the reforms were based, two elements need to be noted. First, the reformers wanted to end the closed career structure that had governed the permanent heads cadre. The system was to be open to those outside the public service and subject to competitive selection processes. Second, ministers, as democratic "principals", needed to have a say and an influence, even a right of appointment in certain circumstances, to ensure the democratic legitimacy of the system (Boston, Martin, Pallot and Walsh 1991).

Although many consider the New Zealand NPM reforms to be the most radical in attacking the traditional public service model, its process for appointment and evaluation of the chief executive cadre has ended up being the most independent of the several Westminster systems (Halligan 2004). The paradox is a classic instance of a reform being conditioned in some large part by where the system was originally on a continuum. In this case, ministers had been effectively shut out of the staffing and management of the permanent head cadre altogether; the regime was a self-governing "old boys club" if ever there was one (Boston, Martin, Pallot and Walsh 1996).

The reform established a State Services Commissioner who is responsible for open advertising and, as necessary, conducting competitions when vacancies arise in chief executive positions, chairing interview panels for short-listed candidates, and then making a single recommendation to Cabinet. At the outset of the process, the Commissioner is required to seek the input of ministers on the position and on any possible candidates. Cabinet has a power to reject the Commissioner's recommended candidate and have the Commissioner bring forward another recommendation, and to make a unilateral appointment, although this decision must also be accompanied by a public announcement to this effect, an intended deterrent to politicization. As a matter of practice, the Cabinet accepts the recommended candidate. From 1988 to 2001, only one recommended candidate, out of over 80 recommendations, was rejected (Boston 2001).

The Commissioner is appointed by cabinet on the recommendation of the Prime Minister, but can be dismissed only following a resolution of the House of Representatives. This official heads the State Service Commission, a central management agency, reporting to a minister of state services. The Commissioner has statutory responsibilities for the state of the public service as an institution. (There is no Canadian equivalent, as some of the Commissioner's responsibilities, in Canada, reside with the Clerk and the Privy Council Office, the Treasury Board and Secretariat, the Public Service Commission, and the Canada School of Public Service.) The Commissioner, as the employer of chief executives, is responsible for the evaluation of chief executives and decides on their performance and its career and compensation consequences. The Commissioner also has the power, with the approval of Cabinet, to dismiss a chief executive. The Commissioner in these several roles is not the chief executive to the Prime Minister and cabinet; that position is separate. Given its responsibilities in staffing and evaluation the chief executive cadre, this position is unique in the Westminster systems, especially in securing independence from "political interference" (Norman and Gregory 2004).

This regime has its complications but has been evaluated positively by government reviews and academic specialists for its success in staffing the top ranks of a professional and non-partisan public service (Logan 1991; Boston 2001; Norman 2003; Schick 1996).

5.6

A Proposal for Reform

In Australia and Britain, the practice and form have moved closer to the Canadian tradition. In most important respects, these two systems now look very much like the Canadian model: that is,

- a concentration of power under the Prime Minister;
- a coterie of political staff exercising considerable influence in governance; and,
- a cadre of senior public service executives staffed and managed by a prime minister who expects them to be fully responsive to political directions and to actively promote the implementation of the government's agenda.

The successive prime ministers of different partisan persuasions who have governed over the past three decades constitute ample evidence that this dynamic of New Public Governance is neither an idiosyncrasy of a particular prime minister nor the result of a particular partisan ideology. New Zealand stands out here. This is not because it has not been subject to the same pressures; it has been. Rather, it is because, among other things, it put in place a more independent process for the appointment and evaluation of its chief executives that has placed constraints on the capacity of ministers, including the Prime Minister, and their political staff to exert undue political influence over these chief executives and thus over the public servants who are their subordinates.

In each of Australia, Britain and Canada, there have been major debacles that have raised serious questions about the pressures that ministers and political staff exert on public servants in some circumstances, as well as the roles of political staff in the public management process (Keating 2003; Weller 2001; Campbell 2001; Wilson and Barker 2003). These same episodes also raise serious questions about the public service cultures that are fostered by the dynamics of the New Public Governance. The most important of these focus on the degree to which public servants consider themselves required to be submissive to political direction under the guise of ministerial responsibility and public service loyalty. Are public servants, as one British scholar put it, required to be "promiscuously partisan" in an attempt to square loyalty to the government of the day with public service neutrality (Wilson 1991)? Must public servants be advocates, even cheerleaders, for the government's agenda in order to demonstrate their loyalty?

With the exception perhaps of Australia, there has not been a major outbreak of partisan-political staffing of permanent secretaries, departmental secretaries or deputy ministers (as there clearly have been in both some Canadian provincial governments and some Australian state governments). In this sense, these public services, including Australia, proclaim themselves to be non-partisan and thus neutral. And, in each of these systems, the rhetoric from prime ministers, ministers and senior public servants themselves supports the tradition of a neutral public service, even though some recent reforms are hard to square with the traditional notion of a career public service as the means to a neutral public service.

In the Canadian case, the critical question at this point in time is whether the existing regime for staffing and evaluating deputy ministers is adequate to meet the requirements of a neutral public service that will thereby meet the highest standards of integrity and competence. The existing regime is predicated on three major assumptions:

- first, the Prime Minister will appoint as Clerk a public servant who is judged by her or his peers to be among the most suitable, preferably the most suitable, for public service leadership at a particular point in time;
- second, the Prime Minister will normally defer to the Clerk's recommendations on deputy minister appointments and dismissals (or other sanctions); and,
- third, the Clerk will evaluate the performance of deputy ministers accordingly to public service criteria that encompass demonstrated integrity and competence.

In short, the regime assumes that the independence and thus the neutrality of the public service is secured by the Prime Minister respecting the judgement of the senior public service executive as to the staffing of the deputy minister cadre, including the Clerk, and by the Clerk then managing the deputy minister cadre, with her or his peers, in ways that conform to professional public service values.[4]

The primacy of the Prime Minister in this regime is both constitutional and democratic: the Prime Minister exercises the powers of the crown in making these important Governor-in-Council appointments; the Prime Minister is the leader of the government of the day under the democratic system of responsible government. But, of course, the Prime Minister is also a partisan. And, it is for this reason that the Prime

Minister is expected to defer to her public service executives. This is the convention. At best, the Prime Minister exercises discretion as a democratic check on these executives so that they function as professional public servants and do not use their delegated powers to promote their own self-interests.

Canadian prime ministers are especially powerful, both absolutely and in comparison to their Westminster counterparts. The reason is that they are subject to comparatively fewer constraints. The Canadian Charter and the courts as well as the federal distribution of jurisdiction between the federal and provincial governments are huge constraints on executive government and the federal government in the Canadian federation, but they do not act as major constraints on the political executive powers over the management of the public service. Access to government information is a constraint, but pressure applied to the public service by ministers and/or their political staff can minimize the record that is kept. The powers of external audit and review, especially as exercised by the Auditor General, are substantial but are usually minimized by the weaknesses of the Canadian Parliament in scrutinizing and holding ministers and officials to account. In other words, the Canadian regime is one in which a powerful partisan politician has the power to appoint and manage the public service leadership that is meant to be non-partisan and neutral with full discretion and with no transparency or external expert participation. Only by full adherence to the conventional bargain, as noted by Savoie, can the claim be made that the public service leadership so appointed is neutral and will to act independently when necessary.

Insofar as the deputy ministers come from the ranks of the public service, the likelihood of partisan appointments is diminished. However, as noted, what Campbell (2001) calls "personalization" and Bourgault and Dion (1991) call "functional politicization" cannot be ignored, even though this kind of politicization is virtually impossible to prove given the discretionary powers of the Prime Minister to act on her or his own without explanation and the fact that the officials chosen are invariably selected from among the senior ranks where all of whom will have a claim to promotion.[5] At the same time, this is precisely the kind of politicization that is most likely to result in a public service that can be tempted to be willing to be submissive to undue political direction under the mistaken guise of ministerial responsibility and public service loyalty. And, it is reinforced by the significant extent to which prime ministers and ministers have allowed political staff to participate in the administrative process. As a former Australia departmental secretary to prime minister and cabinet notes, it is "the competition for influence" in the court-like inner circles of prime ministers where power has become concentrated that has driven "some public servants [to be] excessively eager to please" their political masters (Keating 2004:12).

One of Canada's most respected former deputy ministers, Arthur Kroeger, has concluded that the Sponsorship Program debacle, as the most serious of a string of recent instances of maladministration, indicates that the public service needs "to exercise an independent role" (quoted in Greenway 2004). No one has come forth to dispute this conclusion, nor, for that matter, has anyone challenged Savoie's conclusion that the conventional bargain is broken. The relevant question, therefore, is how to institutionalize "an independent role" for the public service and what would that mean?

In my opinion, an independent role means the institutionalization of what was the conventional bargain, namely to have the public service leadership—the deputy minister cadre, including the Clerk—staffed and managed by the public service itself but subject to a democratic check. The New Zealand system offers a model, but one that would need to be adapted to the Canadian system as well as strengthened to provide public assurance that public service independence operates in ways that serve the public's interest in good governance and good public management. Independence should not mean that the public service is able to frustrate the legitimate authority of ministers to take executive action. At the same time, independence should help to secure public service, and particularly deputy minister, adherence to its statutory responsibilities and obligations, such as found in the *Financial Administration Act* and the *Public Service Employment Act*.

5.7

A Deputy Minister Commission

What needs to be done is not complicated. The authority to recommend the appointment of deputy ministers, including the Clerk, and the responsibility to evaluate their performance could be assigned by statute to a Deputy Minister Commission, chaired by the Clerk and consisting of a select number of senior deputy ministers and at least two external members appointed by the Governor in Council, on recommendation by the Commission, and with the approval of Parliament, for terms of five years.

The commission would recommend appointments to the Governor in Council, as required by vacancies or the recommendations of the Commission to reassign one or more deputy ministers. The Governor in Council would approve the appointment, ask for another recommendation, or make a unilateral appointment. In order for a unilateral appointment to be made, the Prime Minister would be required to disclose to the House of Commons that the person so appointed had not been recommended by the Commission. The appointment of the Clerk would differ only in that the chair of the Commission would be occupied by one of the external members for the purpose of this appointment.

The Commission would also manage the evaluation of deputy ministers, assess their performance, and decide on consequences, including remuneration.

In the conduct of both its staffing and evaluating functions the Commission would be required to consult with the Prime Minister and appropriate ministers and to have access to personal performance evaluations of public service candidates. It would be supported by the existing staff unit responsible for senior appointments in the Privy Council Office. In most respects it would build on the existing system as administered by the Clerk assisted by the Committee of Senior Officials. At the same time, however, it would make the staffing and management of the deputy minister cadre a collective responsibility of the commissioners. The commission would not be merely advisory to the Clerk, and the Clerk could not submit recommendations that were not approved by the commission. The commission, as chaired by the Clerk, would have collective authority. The two external members would have a special responsibility to ensure that the staffing process was not undermined by collusion among the deputy ministers or between the Clerk and the Prime Minister.

This institutionalization of the process need not make the staffing and evaluation of the deputy minister cadre excessively complex, slow or inefficient. For instance, because of the checks and balances in this proposed process, including the democratic veto and unilateral appointment power of the Cabinet and the presence of two external members, the Commission should possess the authority to decide when to use open or internal competitions as opposed to the redeployments of those already in the cadre or the recommendation of new candidates from within or without the public service without competitions. This discretion would address the one major criticism of the New Zealand model, where statutorily required procedures can slow down the process, a problem that is compounded in New Zealand by the small public service pool from which to recruit deputy minister candidates internally. And, unlike the New Zealand model, it would maintain the dual role of the Clerk as deputy minister to the Prime

Minister and head of the public service. At the same time, the Clerk's role as Head of the Public Service would become a shared power and responsibility with the Deputy Minister Commission. Finally, the entire Commission would be required to find the proper balance, in staffing the deputy minister cadre and in evaluating individual deputy ministers, between political responsiveness and non-partisan neutrality.

These several provisions, perhaps buttressed by others, should also work to reduce the temptation and capacity of the public service leadership to become a self-perpetuating class of self-serving executives. The need to find the proper balance in staffing the deputy minister cadre and in evaluating individual deputy ministers between political responsiveness and non-partisan neutrality raises the question of the length of tenure of deputy ministers in a particular position. Although the issue is acknowledged, the average tenure of deputies in a position is still too brief and deputies retire too young. The professionalism of the service is diminished accordingly, notwithstanding the qualities of the deputy minister cadre. Short tenure and early retirement also establish career incentives that give undue priority to being responsive to the prime minister and the Clerk against other obligations.

A more independent and collective leadership of the public service in staffing and managing the deputy minister cadre is necessary to secure the required degree of political neutrality for the public service. These two conditions may not be sufficient to achieve this objective, but they are likely to assist in helping the senior public service leadership remain committed to staffing on the basis of merit, rather than ministerial preferences, and evaluation on the basis of administrative performance, rather than support for a minister's or the government's political agenda.

Endnotes

[1] A few deputy ministers and associate deputy ministers are actually appointed under the *Public Service Employment Act* but their appointments are excluded from the provisions of the act by the Public Service Commission and they hold office at the pleasure of the Prime Minister (formally the Governor in Council).

[2] With the exceptions noted in endnote 1.

[3] Australia might be considered to have diminished its commitment to its departmental secretaries being seen as members of the professional and non-partisan public service.

[4] These assumptions would not rule out the appointment of deputy ministers from outside the public service, but it would assume that they be recommended by the Clerk. A Clerk from outside the system would probably be considered problematic.

[5] Over the past two or three decades, it is essentially only in the Canadian provincial governments or Australian state governments where officials, or outsiders, with very dubious credentials have been appointed to the most senior ranks.

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